

CUSTOMS BULLETIN AND DECISIONS

**Weekly Compilation of
Decisions, Rulings, Regulations, Notices, and Abstracts
Concerning Customs and Related Matters of the
U.S. Customs Service
U.S. Court of Appeals for the Federal Circuit
and
U.S. Court of International Trade**

VOL. 34

SEPTEMBER 20, 2000

NO. 38

This issue contains:
U.S. Customs Service
T.D. 00-59 and 00-60
General Notices

**DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE**

NOTICE

The decisions, rulings, regulations, notices and abstracts which are published in the CUSTOMS BULLETIN are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Office of Finance, Logistics Division, National Support Services Center, Washington, DC 20229, of any such errors in order that corrections may be made before the bound volumes are published.

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U.S. Customs Service

Treasury Decisions

(T.D. 00-59)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST FOR AUGUST 2000

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Holiday(s): None.

Austria schilling:

August 1, 2000	\$.067062
August 2, 2000	.066401
August 3, 2000	.065711
August 4, 2000	.065951
August 5, 2000	.065951
August 6, 2000	.065951
August 7, 2000	.066169
August 8, 2000	.065544
August 9, 2000	.065340
August 10, 2000	.065965
August 11, 2000	.065740
August 12, 2000	.065740
August 13, 2000	.065740
August 14, 2000	.065674
August 15, 2000	.066387
August 16, 2000	.066445
August 17, 2000	.066510
August 18, 2000	.065900
August 19, 2000	.065900
August 20, 2000	.065900
August 21, 2000	.065602
August 22, 2000	.065151
August 23, 2000	.065166
August 24, 2000	.065609
August 25, 2000	.065580
August 26, 2000	.065580
August 27, 2000	.065580
August 28, 2000	.065420
August 29, 2000	.065158
August 30, 2000	.064853
August 31, 2000	.064519

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for August 2000 (continued):

Belgium franc:

August 1, 2000	\$.022876
August 2, 2000	.022650
August 3, 2000	.022415
August 4, 2000	.022496
August 5, 2000	.022496
August 6, 2000	.022496
August 7, 2000	.022571
August 8, 2000	.022358
August 9, 2000	.022288
August 10, 2000	.022501
August 11, 2000	.022424
August 12, 2000	.022424
August 13, 2000	.022424
August 14, 2000	.022402
August 15, 2000	.022645
August 16, 2000	.022665
August 17, 2000	.022687
August 18, 2000	.022479
August 19, 2000	.022479
August 20, 2000	.022479
August 21, 2000	.022377
August 22, 2000	.022224
August 23, 2000	.022229
August 24, 2000	.022380
August 25, 2000	.022370
August 26, 2000	.022370
August 27, 2000	.022370
August 28, 2000	.022315
August 29, 2000	.022226
August 30, 2000	.022122
August 31, 2000	.022008

Finland markka:

August 1, 2000	\$.155204
August 2, 2000	.153673
August 3, 2000	.152076
August 4, 2000	.152631
August 5, 2000	.152631
August 6, 2000	.152631
August 7, 2000	.153135
August 8, 2000	.151689
August 9, 2000	.151218
August 10, 2000	.152664
August 11, 2000	.152143
August 12, 2000	.152143
August 13, 2000	.152143
August 14, 2000	.151991
August 15, 2000	.153640
August 16, 2000	.153774
August 17, 2000	.153926
August 18, 2000	.152513
August 19, 2000	.152513
August 20, 2000	.152513
August 21, 2000	.151823
August 22, 2000	.150780
August 23, 2000	.150814

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for
August 2000 (continued):

Finland markka (continued):

August 24, 2000	\$0.151840
August 25, 2000	.151773
August 26, 2000	.151773
August 27, 2000	.151773
August 28, 2000	.151403
August 29, 2000	.150797
August 30, 2000	.150091
August 31, 2000	.149317

France franc:

August 1, 2000	\$0.140680
August 2, 2000	.139293
August 3, 2000	.137844
August 4, 2000	.138347
August 5, 2000	.138347
August 6, 2000	.138347
August 7, 2000	.138805
August 8, 2000	.137494
August 9, 2000	.137067
August 10, 2000	.138378
August 11, 2000	.137905
August 12, 2000	.137905
August 13, 2000	.137905
August 14, 2000	.137768
August 15, 2000	.139262
August 16, 2000	.139384
August 17, 2000	.139521
August 18, 2000	.138241
August 19, 2000	.138241
August 20, 2000	.138241
August 21, 2000	.137616
August 22, 2000	.136671
August 23, 2000	.136701
August 24, 2000	.137631
August 25, 2000	.137570
August 26, 2000	.137570
August 27, 2000	.137570
August 28, 2000	.137235
August 29, 2000	.136686
August 30, 2000	.136046
August 31, 2000	.135344

Germany deutsche mark:

August 1, 2000	\$0.471820
August 2, 2000	.467167
August 3, 2000	.462310
August 4, 2000	.463997
August 5, 2000	.463997
August 6, 2000	.463997
August 7, 2000	.465531
August 8, 2000	.461134
August 9, 2000	.459703
August 10, 2000	.464100
August 11, 2000	.462515
August 12, 2000	.462515
August 13, 2000	.462515

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for August 2000 (continued):

Germany deutsche mark (continued):

August 14, 2000	\$0.462054
August 15, 2000 .....	.467065
August 16, 2000 .....	.467474
August 17, 2000 .....	.467934
August 18, 2000 .....	.463639
August 19, 2000 .....	.463639
August 20, 2000 .....	.463639
August 21, 2000 .....	.461543
August 22, 2000 .....	.458373
August 23, 2000 .....	.458475
August 24, 2000 .....	.461594
August 25, 2000 .....	.461390
August 26, 2000 .....	.461390
August 27, 2000 .....	.461390
August 28, 2000 .....	.460265
August 29, 2000 .....	.458424
August 30, 2000 .....	.456277
August 31, 2000 .....	.453925

Greece drachma:

August 1, 2000	\$0.002736
August 2, 2000 .....	.002712
August 3, 2000 .....	.002681
August 4, 2000 .....	.002691
August 5, 2000 .....	.002691
August 6, 2000 .....	.002691
August 7, 2000 .....	.002701
August 8, 2000 .....	.002675
August 9, 2000 .....	.002668
August 10, 2000 .....	.002693
August 11, 2000 .....	.002682
August 12, 2000 .....	.002682
August 13, 2000 .....	.002682
August 14, 2000 .....	.002681
August 15, 2000 .....	.002711
August 16, 2000 .....	.002711
August 17, 2000 .....	.002712
August 18, 2000 .....	.002689
August 19, 2000 .....	.002689
August 20, 2000 .....	.002689
August 21, 2000 .....	.002675
August 22, 2000 .....	.002655
August 23, 2000 .....	.002658
August 24, 2000 .....	.002675
August 25, 2000 .....	.002674
August 26, 2000 .....	.002674
August 27, 2000 .....	.002674
August 28, 2000 .....	.002667
August 29, 2000 .....	.002655
August 30, 2000 .....	.002642
August 31, 2000 .....	.002629

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for
August 2000 (continued):

Ireland pound:

August 1, 2000	\$1.171714
August 2, 2000	1.160160
August 3, 2000	1.148097
August 4, 2000	1.152287
August 5, 2000	1.152287
August 6, 2000	1.152287
August 7, 2000	1.156097
August 8, 2000	1.145177
August 9, 2000	1.141622
August 10, 2000	1.152541
August 11, 2000	1.148605
August 12, 2000	1.148605
August 13, 2000	1.148605
August 14, 2000	1.147462
August 15, 2000	1.159906
August 16, 2000	1.160922
August 17, 2000	1.162064
August 18, 2000	1.151398
August 19, 2000	1.151398
August 20, 2000	1.151398
August 21, 2000	1.146193
August 22, 2000	1.138320
August 23, 2000	1.138574
August 24, 2000	1.146320
August 25, 2000	1.145812
August 26, 2000	1.145812
August 27, 2000	1.145812
August 28, 2000	1.143018
August 29, 2000	1.138447
August 30, 2000	1.133114
August 31, 2000	1.127273

Italy lira:

August 1, 2000	\$0.000477
August 2, 2000	.000472
August 3, 2000	.000467
August 4, 2000	.000469
August 5, 2000	.000469
August 6, 2000	.000469
August 7, 2000	.000470
August 8, 2000	.000466
August 9, 2000	.000464
August 10, 2000	.000469
August 11, 2000	.000467
August 12, 2000	.000467
August 13, 2000	.000467
August 14, 2000	.000467
August 15, 2000	.000472
August 16, 2000	.000472
August 17, 2000	.000473
August 18, 2000	.000468
August 19, 2000	.000468
August 20, 2000	.000468
August 21, 2000	.000466
August 22, 2000	.000463
August 23, 2000	.000463

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for August 2000 (continued):

Italy lira (continued):

August 24, 2000	\$.000466
August 25, 2000	.000466
August 26, 2000	.000466
August 27, 2000	.000466
August 28, 2000	.000465
August 29, 2000	.000463
August 30, 2000	.000461
August 31, 2000	.000459

Luxembourg franc:

August 1, 2000	\$.022876
August 2, 2000	.022650
August 3, 2000	.022415
August 4, 2000	.022496
August 5, 2000	.022496
August 6, 2000	.022496
August 7, 2000	.022571
August 8, 2000	.022358
August 9, 2000	.022288
August 10, 2000	.022501
August 11, 2000	.022424
August 12, 2000	.022424
August 13, 2000	.022424
August 14, 2000	.022402
August 15, 2000	.022645
August 16, 2000	.022665
August 17, 2000	.022687
August 18, 2000	.022479
August 19, 2000	.022479
August 20, 2000	.022479
August 21, 2000	.022377
August 22, 2000	.022224
August 23, 2000	.022229
August 24, 2000	.022380
August 25, 2000	.022370
August 26, 2000	.022370
August 27, 2000	.022370
August 28, 2000	.022315
August 29, 2000	.022226
August 30, 2000	.022122
August 31, 2000	.022008

Netherlands guilder:

August 1, 2000	\$.0418748
August 2, 2000	.414619
August 3, 2000	.410308
August 4, 2000	.411806
August 5, 2000	.411806
August 6, 2000	.411806
August 7, 2000	.413167
August 8, 2000	.409284
August 9, 2000	.407994
August 10, 2000	.411896
August 11, 2000	.410490
August 12, 2000	.410490
August 13, 2000	.410490

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for August 2000 (continued):

Netherlands guilder (continued):

August 14, 2000	\$.410081
August 15, 2000	.414528
August 16, 2000	.414891
August 17, 2000	.415300
August 18, 2000	.411488
August 19, 2000	.411488
August 20, 2000	.411488
August 21, 2000	.409627
August 22, 2000	.406814
August 23, 2000	.406905
August 24, 2000	.409673
August 25, 2000	.409491
August 26, 2000	.409491
August 27, 2000	.409491
August 28, 2000	.408493
August 29, 2000	.406859
August 30, 2000	.404953
August 31, 2000	.402866

Portugal escudo:

August 1, 2000	\$.004603
August 2, 2000	.004558
August 3, 2000	.004510
August 4, 2000	.004527
August 5, 2000	.004527
August 6, 2000	.004527
August 7, 2000	.004542
August 8, 2000	.004499
August 9, 2000	.004485
August 10, 2000	.004528
August 11, 2000	.004512
August 12, 2000	.004512
August 13, 2000	.004512
August 14, 2000	.004508
August 15, 2000	.004557
August 16, 2000	.004561
August 17, 2000	.004565
August 18, 2000	.004523
August 19, 2000	.004523
August 20, 2000	.004523
August 21, 2000	.004503
August 22, 2000	.004472
August 23, 2000	.004473
August 24, 2000	.004503
August 25, 2000	.004501
August 26, 2000	.004501
August 27, 2000	.004501
August 28, 2000	.004490
August 29, 2000	.004472
August 30, 2000	.004451
August 31, 2000	.004428

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for August 2000 (continued):

South Korea won:

August 1, 2000	\$.000896
August 2, 2000	.000896
August 3, 2000	.000897
August 4, 2000	.000896
August 5, 2000	.000896
August 6, 2000	.000896
August 7, 2000	.000894
August 8, 2000	.000896
August 9, 2000	.000897
August 10, 2000	.000897
August 11, 2000	.000896
August 12, 2000	.000896
August 13, 2000	.000896
August 14, 2000	.000895
August 15, 2000	.000896
August 16, 2000	.000897
August 17, 2000	.000897
August 18, 2000	.000897
August 19, 2000	.000897
August 20, 2000	.000897
August 21, 2000	.000897
August 22, 2000	.000898
August 23, 2000	.000897
August 24, 2000	.000898
August 25, 2000	.000898
August 26, 2000	.000898
August 27, 2000	.000898
August 28, 2000	.000899
August 29, 2000	.000901
August 30, 2000	.000902
August 31, 2000	.000902

Spain peseta:

August 1, 2000	\$.005546
August 2, 2000	.005491
August 3, 2000	.005434
August 4, 2000	.005454
August 5, 2000	.005454
August 6, 2000	.005454
August 7, 2000	.005472
August 8, 2000	.005421
August 9, 2000	.005404
August 10, 2000	.005455
August 11, 2000	.005437
August 12, 2000	.005437
August 13, 2000	.005437
August 14, 2000	.005431
August 15, 2000	.005490
August 16, 2000	.005495
August 17, 2000	.005500
August 18, 2000	.005450
August 19, 2000	.005450
August 20, 2000	.005450
August 21, 2000	.005425
August 22, 2000	.005388
August 23, 2000	.005389

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for
August 2000 (continued):

Spain peseta (continued):

August 24, 2000	\$0.005426
August 25, 2000 .....	.005424
August 26, 2000 .....	.005424
August 27, 2000 .....	.005424
August 28, 2000 .....	.005410
August 29, 2000 .....	.005389
August 30, 2000 .....	.005363
August 31, 2000 .....	.005336

Taiwan N.T. dollar:

August 1, 2000	\$0.032103
August 2, 2000 .....	.032154
August 3, 2000 .....	.032103
August 4, 2000 .....	.032134
August 5, 2000 .....	.032134
August 6, 2000 .....	.032134
August 7, 2000 .....	.032103
August 8, 2000 .....	.032154
August 9, 2000 .....	.032154
August 10, 2000 .....	.032154
August 11, 2000 .....	.032144
August 12, 2000 .....	.032144
August 13, 2000 .....	.032144
August 14, 2000 .....	.032154
August 15, 2000 .....	.032123
August 16, 2000 .....	.032123
August 17, 2000 .....	.032154
August 18, 2000 .....	.032144
August 19, 2000 .....	.032144
August 20, 2000 .....	.032144
August 21, 2000 .....	.032154
August 22, 2000 .....	.032175
August 23, 2000 .....	.032175
August 24, 2000 .....	.032185
August 25, 2000 .....	.032154
August 26, 2000 .....	.032154
August 27, 2000 .....	.032154
August 28, 2000 .....	.032175
August 29, 2000 .....	.032165
August 30, 2000 .....	.032165
August 31, 2000 .....	.032154

Dated: September 1, 2000.

RICHARD B. LAMAN,
Chief,
Customs Information Exchange.

(T.D. 00-60)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATES FOR AUGUST 2000

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rates published in Treasury Decision 00-51 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Holiday(s): None.

Denmark krone:

August 3, 2000	\$.121219
August 8, 2000	.120934
August 9, 2000	.120598
August 11, 2000	.121242
August 12, 2000	.121242
August 13, 2000	.121242
August 14, 2000	.121117
August 21, 2000	.121115
August 22, 2000	.120192
August 23, 2000	.120236
August 24, 2000	.121051
August 25, 2000	.121007
August 26, 2000	.121007
August 27, 2000	.121007
August 28, 2000	.120715
August 29, 2000	.120192
August 30, 2000	.119760
August 31, 2000	.119033

New Zealand dollar:

August 22, 2000	\$.443500
August 23, 2000	.428300
August 24, 2000	.433800
August 25, 2000	.435700
August 26, 2000	.435700
August 27, 2000	.435700
August 28, 2000	.434000
August 29, 2000	.429500
August 30, 2000	.426700
August 31, 2000	.426800

Norway krone:

August 3, 2000	\$.110963
August 9, 2000	.111198
August 23, 2000	.111049
August 24, 2000	.111235
August 29, 2000	.110902
August 30, 2000	.110540
August 31, 2000	.110078

FOREIGN CURRENCIES—Variances from quarterly rates for August 2000
(continued):

Sweden krona:

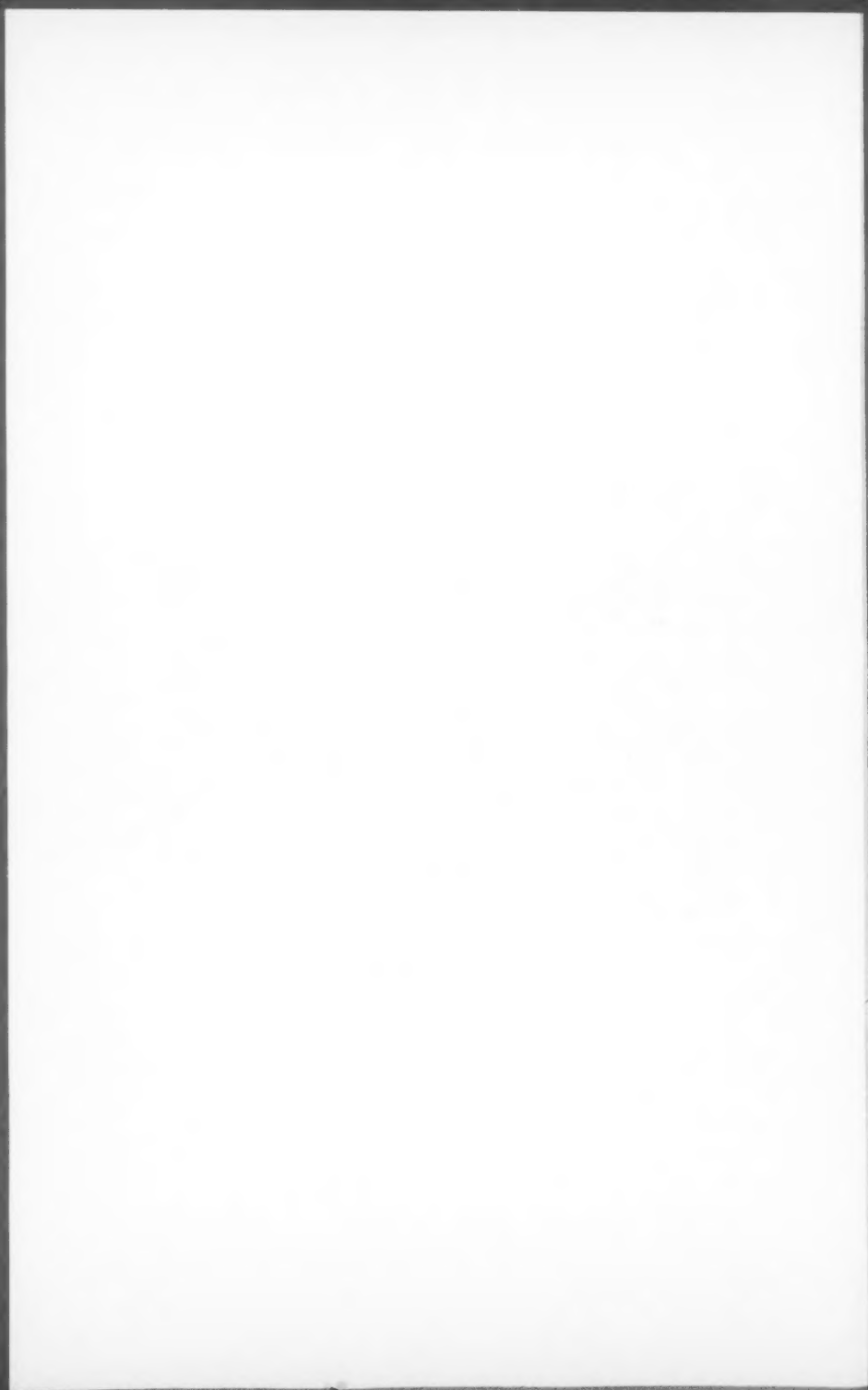
August 2, 2000	\$0.108003
August 3, 2000 .....	.107124
August 4, 2000 .....	.108155
August 5, 2000 .....	.108155
August 6, 2000 .....	.108155
August 8, 2000 .....	.108172
August 9, 2000 .....	.108108
August 18, 2000 .....	.107956
August 19, 2000 .....	.107956
August 20, 2000 .....	.107956
August 21, 2000 .....	.107619
August 22, 2000 .....	.107124
August 23, 2000 .....	.107158
August 24, 2000 .....	.107770
August 25, 2000 .....	.107400
August 26, 2000 .....	.107400
August 27, 2000 .....	.107400
August 28, 2000 .....	.107009
August 29, 2000 .....	.106259
August 30, 2000 .....	.105932
August 31, 2000 .....	.105876

Switzerland franc:

August 8, 2000	\$0.583192
August 9, 2000 .....	.581835
August 11, 2000 .....	.582038
August 12, 2000 .....	.582038
August 13, 2000 .....	.582038
August 14, 2000 .....	.580923
August 18, 2000 .....	.580215
August 19, 2000 .....	.580215
August 20, 2000 .....	.580215
August 21, 2000 .....	.578871
August 22, 2000 .....	.574548
August 23, 2000 .....	.578637
August 29, 2000 .....	.580114
August 30, 2000 .....	.576037
August 31, 2000 .....	.573888

Dated: September 1, 2000.

RICHARD B. LAMAN,
Chief,
Customs Information Exchange.



U.S. Customs Service

General Notices

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, September 6, 2000.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

STUART P. SEIDEL,
*Assistant Commissioner,
Office of Regulations and Rulings.*

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF TELECOMMUNICATIONS RECEIVER AND TRANSMITTER

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter and revocation of treatment relating to tariff classification of a telecommunications receiver and transmitter.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of a telecommunications receiver and transmitter under the Harmonized Tariff Schedule of the United States (HTSUS), and revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before October 20, 2000.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue,

N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Gail A. Hamill, General Classification Branch, (202) 927-1172.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of a telecommunications receiver and transmitter. Although in this notice Customs is specifically referring to one ruling, NY 816354, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)(2)), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any

person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise a rebuttable presumption of a lack of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY 816354, dated December 27, 1995, set forth as Attachment A to this document, Customs classified a telecommunications receiver under subheading 8541.40.60, HTSUS, which provides for other diodes, and a transmitter under subheading 8541.40.95, HTSUS, which provides for other photosensitive semiconductor devices.

It is now Customs position that the telecommunications receiver and transmitter is properly classified under subheading 8517.50.50, HTSUS, as other apparatus for carrier-current line systems or for digital line systems, other, telephonic. The receiver and transmitter device is assembled from goods of headings 8541, 8542 and 8533, HTSUS. The receiver converts light signals to electrical signals in high-speed data communications applications, while the transmitter does the reverse operations. The device meets technical and commercial definitions of receivers and transmitters for use in telecommunications line systems, and will be classified accordingly.

Customs intends to revoke NY 816354 and any other ruling not specifically identified, in order to classify this merchandise under subheading 8517.50.50, HTSUS. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received. Proposed HQ 962957, revoking NY D816354, is set forth as Attachment B to this document.

Dated: August 30, 2000.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, December 27, 1995.
CLA-2-85:RR:NC:MA:109 816354
Category: Classification
Tariff No. 8541.40.6050 and 8541.40.9500

MS. MARY E. GILL
AT&T
Guilford Center 1-3A10
5420 Millstream Road
Greensboro, NC 27420

Re: The tariff classification of an 1227-type Astrotec lightwave receiver and a 1310-type Astrotec transmitter from Mexico.

DEAR MS. GILL:

In your letter dated October 25, 1995 you requested a tariff classification ruling. The items described in your letter, accompanying literature, and from our phone conversation of December 20, 1995, consists of a 1227-type Astrotec lightwave transmitter, which translates light pulse signals to electrical signals, and a 1310-type Astrotec lightwave transmitter which translates an electrical signal into a light pulse signal. These items are put on fiber optic cable and are used in communications networks. You explained in our phone conversation that both items are used together as a pair and are not used in television transmission.

According to your literature the Astrotec lightwave receiver consists of a hybrid integrated circuit with a silicon or gallium arsenide preamplifier and a silicon bipolar comparator, an indium gallium arsenide photo detector and a fiber optic signal translator. The fiber optic assembly is a pigtail type mechanism which connects this device to the fiber optic cable. The Astrotec lightwave transmitter also contains a hybrid integrated circuit. In addition, it also contains resistors to optimize the laser transmissions, a CMOS integrated circuit and an indium gallium arsenide phosphide laser module for generation of an optical signal. The laser module contains a laser diode and photo diode indivisibly attached to a metal base. The photo diode serves as a back face monitor for the laser, adjusting the emissions from the laser to generate a uniform transmission. The hybrid integrated circuit in the transmitter performs the reverse function of the hybrid integrated circuit in the receiver, directing the conversion of electrical digital inputs by the laser module into the light pulse signals conveyed on the fiber optic cable. According to information provided in the course of your phone conversation, the Astrotec lightwave transmitter contains no optical elements. The assembly of the Astrotec lightwave transmitter and connectors are similar to the receiver device.

The applicable subheading for the 1227-type Astrotec lightwave optical receiver and 1310-type Astrotec lightwave transmitter will be 8541.40.6050 and 8541.40.9500, Harmonized Tariff Schedule of the United States (HTS) respectively, which provides for "[Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light emitting diodes: Other diodes, Other: Other]" and "[Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light emitting diodes: Other: Other]." The rate of duty will be Free for both numbers.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Phil Carabetta at 212-466-5673.

ROGER J. SILVESTRI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 962957 gah

Category: Classification

Tariff No. 8517.50.50

Ms. MARY E. GILL
CORPORATE COUNSEL
LUCENT TECHNOLOGIES
PO Box 20046
Room GC-C3A23
Greensboro, NC 27420-0046

Re: Reconsideration of NY 816354; telecommunications receiver and transmitter.

DEAR Ms. GILL:

This is in regards to a New York (NY) ruling 816354, issued to you on December 27, 1995, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a 1227-type Astrotec lightwave receiver and a 1310-type Astrotec lightwave transmitter. We have reviewed this ruling and have determined that it is incorrect. Therefore, this ruling revokes NY 816354 and sets forth the correct classification for the telecommunications receiver and transmitter.

Facts:

The merchandise was described by AT&T in 1995 as a 1310-type Astrotec lightwave receiver, which translates optical signals into electrical signals, and a 1227-type Astrotec lightwave transmitter, which translates electrical signals to optical signals. These devices are put in pairs on fiber optic cable and are used in communications networks.

The 1310-type receiver contains a hybrid integrated circuit (HIC) with a silicon or gallium arsenide preamplifier, a silicon bipolar comparator, an indium gallium arsenide photo detector, all assembled together and attached to a fiber optic pigtail connector.

The 1227-type transmitter contains a hybrid integrated circuit, resistors, a CMOS integrated circuit and an indium gallium arsenide phosphide laser module. The laser module within the 1227-type device generates the optical signal and contains a laser diode and a photo diode. The photo diode acts as a back face monitor for the laser, adjusting the emissions from the laser to generate a uniform transmission. The HIC directs the conversion of the electrical signals by the laser module for generation into optical signals. All of the elements are assembled together and attached to a fiber optic pigtail connector.

In NY 816354 the receiver and transmitter were determined to be classifiable in subheading 8541.40.60 and 8541.40.95, respectively.

Issue:

Are the receiver and transmitter classifiable in heading 8517 as electrical apparatus for digital line telephony or heading 8541 as photosensitive semiconductor devices assembled in modules?

Law and Analysis:

Classification of merchandise under the Harmonized Tariff Schedule of the United States (HTSUS) is in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRIs.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80, 54 FR 35127, 35128 (August 23, 1989).

Heading 8541 covers **diodes, transistors and similar semiconductor devices; photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes; mounted piezoelectric crystals; parts thereof.** This heading contains five groups of goods

separated by semi-colons. The first three groups, highlighted in bold, contain goods which are part of the receiver or the transmitter at issue. For ease of reference, we will refer to diodes, transistors and similar semiconductor devices as group 1. Group 2 will be photosensitive semiconductor devices, and group 3 will be light-emitting diodes.

The receiver includes a HIC, a silicon or gallium arsenide preamplifier, a silicon bipolar comparator, and an indium gallium arsenide photo detector. These components are classified in group 1 and group 2 of heading 8541, and heading 8542. The transmitter includes resistors (heading 8533), a HIC and a CMOS integrated circuit (heading 8542), and an indium gallium arsenide phosphide laser module, which contains a laser diode (group 3) and a photo diode (group 2). Thus, the receiver is a device assembled from the goods of the first two groups and heading 8542, while the transmitter is a device assembled of the goods of groups 2 and 3, heading 8533 and heading 8542.

Each of the groups of devices separated by semicolons in the heading text has distinct electronic properties. Group two, photovoltaic cells, may be classified in heading 8541, even when they are in module or panel form. In the instant case, both the receiver and the transmitter contain a photodiode, a type of photovoltaic cell, in module form. However, these modules also contain devices of other groups within heading 8541, heading 8533 and heading 8542. EN(B)(2)(i) to the heading restates that photovoltaic cells in module form remain within the heading. It further indicates the limitations of modules and panels of this heading by an example. That example is of a solar cell (group 2) combined with a diode (group 1). When the two are combined, the light collected from the solar cell is transmitted by the diode to a motor. That combination of devices is excluded from heading 8541, and included in heading 8501. EN(B)(2)(i). The diode, in this example, does not contribute to the functioning of the solar cell. It has its own function, which is to control the direction of the current flow from the solar cell to the motor.

EN(B)(2)(iii) is also instructive on the issue of what types of modules are included in heading 8541. This section covers photocouples and photorelays. In these devices the photovoltaic cell is coupled to an electroluminescent diode. However, these modules can be distinguished from the aforementioned type of module in that the semiconductors are coupled together for a single purpose or function. That function is the transmission of an electrical signal by the action of light on a photosensitive semiconductor.

Although *ABB Power Transmission v. U.S.*, 19 CIT 1044 (1995), deals with thyristors modules classified in group 1, it is instructive on the issue of modules that are classifiable in heading 8541. The Court stated that " * * * the principal and sole function of a thyristor module is imparted by the thyristors acting in unison * * * ".

The ENs and *ABB Power* interprets the legal text of *whether or not assembled in modules or made up into panels*. We interpret it to apply to all photovoltaic cells that are in module or panel form. We interpret the legal text to not include combinations of goods from two or more distinct groups enumerated in heading 8541, or combinations of goods of heading 8541 and another heading, when the combination of goods do not contribute to a single function covered by a single group enumerated in heading 8541. Thus, the instant receiver and transmitter are excluded from classification in heading 8541.

Note 5(a) to chapter 85 defines diodes, transistors and similar semiconductor devices as semiconductor devices the operation of which depends on variations in resistivity on the application of an electric field. These devices are classified in heading 8541 if they meet the definition of note 5(a) even if they are also described by another heading. Note 5(a) does not extend to other groups of goods classified in heading 8541, such as photosensitive devices and light emitting diodes. This is further indication that the groups of goods enumerated in the heading 8541 text are considered distinct from each other.

Both the receiver and the transmitter contain goods which are not described in the 8541 heading text. The receiver contains a hybrid integrated circuit (heading 8542). The transmitter contains a hybrid integrated circuit (heading 8542) and resistors (heading 8533). The HICs have been likened to the "brain" of the transmitter and receiver. Their function includes the amplification of the electrical signal, filtering, regeneration of the electrical signal, modulation, power control, etc. These additional goods expand the functions of the 8541 enumerated goods. Heading 8541 does not specifically describe either the entire receiver or the entire transmitter.

We have considered our view in light of the decision in *ABB Power Transmission v. U.S.*, *supra*, in which thyristor modules (group 1) were classified as similar semiconductor devices of note 5(a) to chapter 85. The thyristor modules contained other circuitry, but the court found that the other circuitry served the same function as the thyristors, that of di-

recting the flow of electric current. The instant transmitter and receiver function to direct, generate, amplify, and convert electrical and optical signals.

The 1310-type Astrotec lightwave receiver is designed for use in transmission systems or medium to high-speed data communication applications, that is, intra office or intermediate-reach applications. It converts a light pulse signal to electrical signals. The device contains a preamplifier which begins the amplification process by taking the current from the photodiode and boosting it. The output is fed to a voltage comparator which produces a clean digital output signal. The hybrid integrated circuit processes the signal further.

The 1227-type Astrotec lightwave transmitter is designed for use with the above receiver in the same applications. It converts an electrical signal into a light pulse signal to be put on fiber optic cable which is connected to a communication network. The HIC directs the conversion of the electrical signals by the laser module for generation into optical signals. It modulates the electrical signal. The optical signal is generated by the laser diode, monitored by the photodiode, and sent to the fiber optic pigtail for transmission to cable. Laser diodes also require additional circuitry to achieve acceptable stability in diverse temperatures.

Heading 8517 covers electrical apparatus for line telephony or line telegraphy * * * and telecommunication apparatus for carrier-current line systems or for digital line systems; videophones. Telecommunications apparatus for carrier-current or digital line systems, by reference to the heading's EN(III), are based on the modulation of electrical carrier-current or of a light beam by analogue or digital signals. Use is made of a variety of modulation techniques. These apparatus for line systems transmit words, data and images in a digital or analog form. Line equipment includes transmitters and receivers or electro-optical converters, and combined modulators-demodulators (modems). Thus, the EN to heading 8517 specifies transmitters and receivers as complete line apparatus within the scope of the heading text.

Receivers and transmitters are devices which are defined as accepting signals and generating signals, respectively. A. Freedman, *The Computer Glossary* 440, 552 (Sixth Ed. 1993). The instant goods meet these definitions and are commercially known as receivers and transmitters for use in telecommunications systems. Alternatively, the EN includes in line equipment electro-optical converters, the function of the instant goods.

Subheading 8517.50 covers other apparatus, for carrier-current line systems or for digital line systems. The goods are specifically described at GRI 1 as other telephonic apparatus for line systems, in subheading 8517.50.50, HTSUS.

Holding:

The 1310-type Astrotec lightwave receiver and 1227-type Astrotec lightwave transmitter are classified in subheading 8517.50.50, HTSUS, which provides for electrical apparatus for line telephony or line telegraphy * * *, other apparatus, for carrier-current line systems or for digital line systems, other, telephonic.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO CLASSIFICATION OF MOLDED HOLIDAY CANDLES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of four tariff classification ruling letters and treatment relating to the classification of molded holiday candles.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke four ruling letters pertaining to the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of molded holiday candles and any treatment previously accorded by the Customs Service to substantially identical transactions. Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before October 20, 2000.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address during regular business hours.

FOR FURTHER INFORMATION CONTACT: John G. Black, General Classification Branch (202) 927-1317.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is respon-

sible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke four ruling letters pertaining to the tariff classification of molded holiday candles. Although in this notice Customs is specifically referring to New York Ruling Letters (NY) C82327, dated December 15, 1997; C82940, dated December 31, 1997; C82941, dated December 31, 1997, and B83722, dated February 13, 1998, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the ones identified. No further rulings have been found. This notice will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In NY C82327, dated December 15, 1997; C82940, dated December 31, 1997; C82941, dated December 31, 1997, and B83722, dated February 13, 1998, Customs ruled that molded holiday candles were classified in heading 3406, HTSUS, which provides for "Candles, tapers, and the like." These ruling letters are set forth in "Attachments A-D" to this document. Since the issuance of those rulings, Customs has had a chance to reconsider the classification of this merchandise based on Customs Informed Compliance Publication on the Classification of Festive Articles published in the CUSTOMS BULLETIN, Volume 32, Numbers 2/3, dated January 21, 1998 and Headquarters Ruling Letter (HQ) 961873, dated January 29, 1999, and has determined that the four rulings are in error. We have determined that certain three-dimensional molded holi-

day candles are within the class of "festive articles" and are properly classified in subheadings 9505.10.25, HTSUS, as "Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Articles for Christmas festivities and parts and accessories thereof: Christmas ornaments: Other: Other" in the case of the Christmas candles and in subheading 9505.90.60 as "Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Other: Other" in the case of the Thanksgiving candles.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke NY C82327, C82940, C82941, and B83722, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 962900 (see "Attachment E" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to modify or revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: September 5, 2000.

MARVIN AMERNICK
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, December 15, 1997.
CLA-2-34:RR:NC:2:236 C82327
Category: Classification
Tariff No. 3406.00.0000

MR. BERNARD D. LIBERATI
MORRIS FRIEDMAN & CO.
320 Walnut Street
Philadelphia, PA 19106-3883

Re: The tariff classification of Santa Claus, Item # 19003CD, from China.

DEAR MR. LIBERATI:

In your letter dated March 17, 1997, on behalf of your client Liss Brother Inc., you requested a tariff classification ruling.

The sample submitted, Santa Claus, Item # 19003CD, is a candle molded into the shape of a Santa Claus in a red suit and cap, holding a gift and black bag over its shoulder. The candle measures approximately 4" in height and 2 1/4" in diameter.

The applicable subheading for the Santa Claus will be 3406.00.0000, Harmonized Tariff Schedule of the United States, which provides for Candles, tapers and the like. The rate of duty will be 2.3 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

The Department of Commerce has determined that petroleum wax candles in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers are within the scope of the antidumping duty order on petroleum wax candles from China. In our opinion, the sample candle is not within the scope of the antidumping duty order.

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist V. Gualario at 212-466-5744.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,

U.S. CUSTOMS SERVICE,

New York, NY, December 31, 1997.

CLA-2-34:RR:NC:2:236 C82940

Category: Classification

Tariff No. 3406.00.0000

MR. BERNARD D. LIBERATI

MORRIS FRIEDMAN & CO.

320 Walnut Street

Philadelphia, PA 19106-3883

Re: The tariff classification of Christmas Mice Tree Candle, Item #18059 from China.

DEAR MR. LIBERATI:

In your letter dated March 17, 1997, on behalf of your client Liss Brothers Inc., you requested a tariff classification ruling.

The sample submitted, Christmas Mice Tree Candle, Item #18059, is a candle molded into the shape of a decorated green Christmas tree with several mices, gold stars and other Christmas ornaments with several presents at its base. The candle measures approximately 8" in height and 4 1/4" at its widest width.

The applicable subheading for Christmas Mice Tree Candle, Item #18059 will be 3406.00.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for Candles, tapers and the like. The rate of duty will be 2.3 percent ad valorem.

The Department of Commerce has determined that petroleum wax candles in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers are within the scope of the antidumping duty order on petroleum wax candles from China. In our opinion, the sample candle is not within the scope of the antidumping duty order.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist V. Gualario at 212-466-5744.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, December 31, 1997.
CLA-2-34:RR:NC:2:236 C82941
Category: Classification
Tariff No. 3406.00.0000

MR. BERNARD D. LIBERATI
MORRIS FRIEDMAN & CO.
320 Walnut Street
Philadelphia, PA 19106-3883

Re: The tariff classification of Natural Pine Cone Candle, Item #18058 from China.

DEAR MR. LIBERATI:

In your letter dated March 17, 1997, on behalf of your client Liss Brothers Inc., you requested a tariff classification ruling.

The sample submitted, Natural Pine Cone Candle, Item #18058, is a candle molded into the shape of a pine cone. The candle measures approximately 5" in height and 3¼" at its widest width.

The applicable subheading for the Natural Pine Cone Candle, Item #18058 will be 3406.00.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for Candles, tapers and the like. The rate of duty will be 2.3 percent ad valorem.

The Department of Commerce has determined that petroleum wax candles in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers are within the scope of the antidumping duty order on petroleum wax candles from China. In our opinion, the sample candle is not within the scope of the antidumping duty order.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist V. Gualario at 212-466-5744.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, February 13, 1998.
CLA-2-34:RR:NC:SP:236 B83722
Category: Classification
Tariff No. 3406.00.0000

MR. BERNARD LIBERATI
MORRIS FRIEDMAN & CO.
320 Walnut Street
Philadelphia, PA 19106-3883

Re: the tariff classification of candles from China.

DEAR MR. LIBERATI:

In your letter dated March 14, 1997, on behalf of Liss Brothers, Inc. you requested a tariff classification ruling.

In your letter you indicate that the item is called Mr. & Mrs. Pilgrim Candle; however, only one sample, Mrs. Pilgrim Candle was submitted. The candle, item #80093, is molded

in the shape of a Pilgrim woman. It measures approximately 6" in height, 3" in diameter at the base, 1½" in diameter at the top and is packaged in cellophane.

The applicable subheading for the candle will be 3406.00.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for Candles, tapers and the like. The rate of duty will be 1.2% ad valorem.

The Department of Commerce has determined that petroleum wax candles in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers are within the scope of the antidumping duty order on petroleum wax candles from China. In addition, the Department of Commerce has determined that candles shaped as identifiable objects are not within the scope of the antidumping duty order on petroleum-wax candles from China. In our opinion, the sample candle is not within the scope of the antidumping duty order.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist V. Gualario at 212-466-5744.

ROBERT B. SWIERUPSKI,

Director,
National Commodity Specialist Division.

[ATTACHMENT E]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE,

Washington, DC.

CLA-2 RR:CR:GC 962900 JGB

Category: Classification

Tariff No. 9505.10.5020 and 9505.90.60

MRS. JEAN FAIR
IMPORT MANAGER
LISS BROTHERS, INC.
14501 Townsend Road
Philadelphia, PA 19154

Re: Revocation of NY C82327, C82940; C82941 and B83722; Decorative Molded Three-Dimensional Holiday Candles; *Midwest of Cannon Falls, Inc. v. United States*; Festive Articles.

DEAR MRS. FAIR:

This is in response to your letter of April 13, 1999, requesting reconsideration of New York Ruling Letters (NY) C82327, dated December 15, 1997; C82940, dated December 31, 1997; C82941, dated December 31, 1997, and B83722, dated February 13, 1998, issued to Morris Friedman & Co., acting on behalf of Liss Brothers, Inc., concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of four styles of decorative molded three-dimensional holiday candles. We regret the delay in responding.

This letter is to inform you that NY C82327, C82940; C82941 and B83722 no longer reflect the view of the Customs Service concerning the classification of decorative molded three-dimensional holiday candles and that the following reflects our position for these products.

Facts:

NY C82327 describes Item # 19003CD, a candle molded in the shape of Santa Claus. Santa's suit and cap are colored red with white trimming. Santa has a black belt and holds a decorated Christmas tree and a black bag. The candle, measuring about 4 inches in height by 2½ inches in width, has a level wax bottom, allowing it to rest on a flat surface.

NY C82940 describes Item # 18059, a candle molded in the shape of a decorated Christmas tree, surrounded by several mice, gold stars, and other Christmas ornaments. Several

wrapped Christmas presents rest at its base. The candle measures approximately 6 inches in height and 4 1/4 inches at its widest point. The candle has a level wax bottom, allowing it to rest on a flat surface.

NY C82941 describes Item # 18058, a natural pine cone candle. It is a candle molded into the shape of a pine cone. The candle measures approximately 5 inches in height and 3 3/4 inches at its widest portion. The pine cone is brown and appears to be dusted in white to simulate snow. The candle has a level wax bottom, allowing it to rest on a flat surface.

NY B83722 describes Item # 80093, Mr. and Mrs. Pilgrim Candle. These are a pair of three-dimensional molded candle figures. Mr. Pilgrim is in a pilgrim outfit with a large white collar and with a buckle on each shoe and on his black hat. He holds a pumpkin. Mrs. Pilgrim is dressed as a woman of the early 17th century with a full skirt and mobcap. She wears an apron and holds some food in a basket. The candle has a level wax bottom, allowing it to rest on a flat surface.

Each of the rulings listed above classified the described candles in heading 3406, HTSUS, the provision for "Candles, tapers and the like."

Issue:

Whether the candles are classifiable as candles or festive articles.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI's). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's may then be applied. The headings under consideration are as follows:

3406	[c]andles, tapers, and the like
9505	[f]estive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof.

In *Midwest of Cannon Falls, Inc. v. United States*, Court No. 92-03-00206, 1996 Ct. Int'l Trade LEXIS 15 (Ct. Int'l. Trade, January 18, 1996), 122 F.3d 1423 (Fed Cir. 1997) (hereinafter *Midwest*), the Court addressed the scope of heading 9505, HTSUS, specifically, the class or kind "festive articles," and provided new guidelines for classification of articles in the heading. In general, merchandise is classifiable in heading 9505, HTSUS, as a festive article when the article, as a whole:

1. Is not predominately of precious or semiprecious stones, precious metal or metal clad with precious metal;
2. Functions primarily as a decoration or functional item used in celebration of and for entertainment on a holiday; and
3. Is associated with or used on a particular holiday

Based on a review of the *Midwest* articles, Customs is of the opinion that the court has included within the scope of the class "festive articles," decorative household articles which are representations of an accepted symbol for a recognized holiday. See our Informed Compliance Publication, (ICP) "Classification of Festive Articles," 32 CUSTOMS BULLETIN 2/3, dated January 21, 1998.

In addition to the above listed criteria, the Court gave consideration to the general criteria for classification set forth in *United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F.2d 373 (1976), cert. denied, 429 U.S. 979 (hereinafter *Carborundum*). In the ICP Customs indicates that for those articles not specifically recognized in *Midwest* or listed in the ICP, Customs will consider the general criteria set forth in *Carborundum* to determine whether a particular article belongs to the class or kind "festive articles." Those criteria include: the general physical characteristics of the article, the expectation of the ultimate purchaser, channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), use in the same manner as merchandise which defines the class, economic practicality of so using the import, and recognition in the trade of this use.

The subject candles have no precious or semi-precious stones, metals or metal clad with precious metal. Item # 19003CD, a three-dimensional representation of Santa Claus, item # 18059, a three-dimensional representation of a Christmas tree, and item # 80093, a three-dimensional representations of "Mr. and Mrs. Pilgrim", are articles (candles) which

are representations of accepted symbols; Santa Claus and Christmas tree, for the recognized holiday of Christmas and Mr. and Mrs. Pilgrim for Thanksgiving. As such, they are described by heading 9505, HTSUS, and classifiable as festive articles.

While a pine cone, item # 18058 is not in and of itself a recognized symbol of any holiday, its association with accepted symbols here and the application of the *Carborundum* factors indicate that it is principally used as a festive article. The article appears to be sold for a limited amount of time, during the particular holiday's retail season and is used by the ultimate purchaser in the same manner as other festive articles.

The candles are described by both headings. *Midwest* addressed how to classify an article when it is described by both the festive heading and another one. In *Midwest*, a series of nutcrackers were determined to be described by both the festive articles heading (9505) and the doll heading (9502). The Court stated that "dolls" was an *eo nomine* provision and that "ornament" was a use provision. It then held that: " * * * a use heading is generally more specific than an *eo nomine* one." However, rather than adopting a rule for deciding between an *eo nomine* and a use provision under the HTSUS, the Court chose to determine that the heading 9505 classification was more specific based on "all the factors and circumstances." We have performed a similar analysis in this case. That is, we have compared the term "festive article" in heading 9505 to the term "candle" in heading 3406 and found, that for these particular candles, heading 9505 is more specific for tariff purposes. Included in this analysis is the finding that the candles under consideration here are principally decorative three-dimensional articles which would not be used principally to provide light, but rather to decorate a home for a particular holiday.

Finally, Note 1(a) to chapter 95 states, in pertinent part, that: "[t]his chapter does not cover: [c]hristmas tree candles (heading 3604)." This Note does not exclude the subject articles as they are not "Christmas tree candles."

See HQ 961873 dated January 29, 1999, for a similar ruling.

Holding:

Item #s 19003CD, 18059, and 18058 are classifiable in subheading 9505.10.25, HTSUS, as a "[f]estive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: [c]hristmas ornaments: [o]ther."

Item # 80093 is classifiable in subheading 9505.90.60, HTSUS, the provision for "[f]estive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: [o]ther: [o]ther."

NY C82327, C82940; C82941 and B83722 are hereby revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF ENZYMATICALLY HYDROLYSED WHEAT PROTEIN PRODUCTS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of tariff classification ruling letters and the treatment relating to the classification of enzymatically hydrolysed wheat protein products.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking two rulings, and any treatment previously accorded by Customs to substantially identical transactions, concerning the tariff classification of products known as "Novolat 80" and "Propyl 80", and is issuing a prospective ruling for a product known as "Solpro 300" under the Harmonized Tariff Schedule of the United States (HTSUS). Notice of the proposed revocations was published in the CUSTOMS BULLETIN on July 26, 2000, Volume 34, No. 30. No comments were received.

FOR FURTHER INFORMATION CONTACT: Norman W. King, General Classification Branch (202) 927-1109.

EFFECTIVE DATE: This notice is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 20, 2000.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable

Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to Customs obligations, a notice of proposed revocations of New York Ruling Letters (NYRL), B87801 dated August 13, 1997, and B88094 dated November 24, 1997, was published in the CUSTOMS BULLETIN on July 26, 2000, Volume 34, No. 30. This notice advises interested parties that Customs is revoking the two rulings pertaining to the tariff classification of enzymatically hydrolyzed wheat protein. Although in this notice Customs is specifically referring to two rulings, NYRLs B87801 dated August 13, 1997, and B88094 dated November 24, 1997, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to those identified. No further rulings have been found. This notice will cover any rulings on the merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In NYRL B88094 dated November 24, 1997, Customs ruled that a product known as "Propyl 80" was classified in subheading 3824.90.9050, HTSUS, as prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; residual products of the chemical or allied industries, not elsewhere specified or included: other. In NYRL B87801 dated August 13, 1997, Customs ruled that a product known as "Novolat 80" was classified as wheat gluten, whether or not dried, to be used as animal feed, in subheading 1109.00.1000, HTSUS.

In considering a request for a prospective ruling under 19 CFR Part 177, for a product known as "Solpro 300", Customs is of the opinion that it is classified as other protein substances and their derivatives, not elsewhere specified or included, in subheading 3504.00.50, HTSUS. Customs is issuing a prospective ruling for "Solpro 300". Customs is of the further opinion that the products described in NYRLs B87801 and B88094 are similar to the product described as "Solpro 300" and are

also classified in subheading 3504.00.50, HTSUS. Based on this additional review and pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NYRL B88094 as set forth in Attachment A of this document (964272) and revoking NYRL B87801 as set forth as Attachment B of this document (964217) and simultaneously issuing a prospective ruling for the product known as "Solpro 300" as set forth in Attachment C to this document (963306).

Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling revoking NYRLs B87801 and B88094, will become effective 60 days after its publication in the CUSTOMS BULLETIN.

Dated: September 6, 2000.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 6, 2000.
CLA-2 RR:CR:GC 964272K
Category: Classification
Tariff No. 3504.00.50

MR. ROBERT GARDENIER
M.E. DEY & Co.
5007 South Howell Avenue
P.O. Box 37165
Milwaukee, WI 53237-0165

Re: Revocation of New York Ruling Letter (NYRL) B88094; Propyl 80.

DEAR MR. GARDENIER:

In response to your letter dated July 30, 1997, on behalf of Strauss Feed LLC, Customs issued on November 24, 1997, NYRL B88094, concerning the classification of a product described as "Propyl 80" from Holland, which was classified in 3824.90.9050, Harmonized Tariff Schedule of the United States (HTSUS), as prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; residual products of the chemical or allied industries, not elsewhere specified or included; other.

This letter is to inform you that in the course of reviewing the classification of a similar product, we have determined that NYRL B88094 no longer reflects the views of the Customs Service and is revoked in accordance with section 177.9(d) of the Customs Regulations (19 CFR 177.9(d)). Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), here-

inafter, section 625), notice of the proposed revocation of NYRL B88094 was published on July 26, 2000, in the CUSTOMS BULLETIN, in Volume 34, No. 30. The following represents our position.

Facts:

In your submission of July 30, 1997, "Propyl 80" is described as an enzymatic hydrolyzed wheat protein composed of 10.5% carbohydrates, 3% fats, 1% ash, and a protein value of 81% that is used as an ingredient in animal milk replacers and veal feeds. Information was not available as to whether the product passes a vitality test (elasticity and plasticity) for vital wheat gluten.

Issue:

Whether "Propyl 80" is classified in heading 1109, HTSUS, as wheat gluten or in heading 3504 as other protein substances and derivatives, not elsewhere specified or included rather than in heading 3824 as other residual products of the chemical or allied industries, not elsewhere specified or included.

Law and Analysis:

The classification of imported merchandise under the HTSUS is governed by the principles set forth in the General Rules of Interpretation (GRI). GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section and chapter notes and, unless otherwise required, according to the remaining GRI's, taken in their appropriate order. GRI 3.(a), also provides, in part, that when goods are *prima facie* classifiable under two or more headings, the heading which provides the most specific description shall be preferred to headings providing a more general description. Accordingly, we first have to determine whether the articles are classified under GRI 1.

Heading 1109, HTSUS, provides for wheat gluten, whether or not dried. The Explanatory Notes (EN's) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and General Rules of Interpretation of the HTSUS. The EN's to heading 1109, state that

Gluten is extracted from wheat flour by simple aqueous separation from the other constituents (starch, etc.). It comes in the form of a whitish viscous liquid or paste ("moist" gluten) or a cream-coloured powder (dry gluten).

It consists essentially of a mixture of various proteins, the main ones being gliadin and glutenin (which account for 85 to 95 % of the total). The presence of these two proteins is characteristic of wheat gluten, which owes to them its elasticity and plasticity when mixed with water in suitable proportions.

Gluten is used mainly to enrich in proteins flours used in making certain types of bread or biscuits, of macaroni or similar products or of dietetic preparations. It is also used as a binder in certain meat preparations, for the manufacture of certain glues or of products such as gluten sulphate or gluten phosphate, hydrolysed vegetable proteins or sodium glutamate.

The heading excludes, *inter alia*;

- (a) Wheat flour enriched by the addition of gluten (heading 11.01).
- (b) Proteins extracted from wheat gluten (generally heading 35.04).
- (c) Wheat gluten prepared for use as a glue or as a glazing or dressing for the textile industry (heading 35.06 or 38.09).

The EN's, in essence, describe wheat gluten as extracted from wheat and due to its elasticity and plasticity, is used in making bread and similar products. It is also used as a binder in certain meat preparations and in the manufacture of other products such as "hydrolysed vegetable proteins". The EN's indicate that products made with the use of wheat gluten are excluded from the heading. "Hydrolysed vegetable proteins", made with the use of wheat gluten are not covered by heading 1109, and therefore not classified in heading 1109, HTSUS, by virtue of GRI 1.

Heading 3824.90.9050, Harmonized Tariff Schedule of the United States (HTSUS), provides for prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; residual products of the chemical or allied industries, not elsewhere specified or included: other.

Heading 3504, HTSUS, provides for peptones and their derivatives; other protein substances and their derivatives, not elsewhere specified or included; hide powder, whether or not chromed. Subheading 3504.00.10, HTSUS, provides for protein isolates and 3504.00.50, HTSUS, provides, in part, for other protein substances and their derivatives, not elsewhere specified or included.

Since "Propyl 80" as described (assuming that it does not pass a vitality test for vital wheat gluten) is not specified or included in heading 1109 or any other heading, it may be classified by virtue of GRI 1 in heading 3824 or 3504, both of which, covers certain products not specified or included elsewhere in the tariff.

As between headings 3504 and 3824, "Propyl 80", a protein substance made with the use of wheat gluten is more specifically described in heading 3504, covering other protein substances and their derivatives.

Holding:

"Propyl 80" (assuming that it does not pass a vitality test for vital wheat gluten) is classified in subheading 3504.00.50, HTSUS as other protein substances and their derivatives, not elsewhere specified or included.

NYRL B88094 dated November 24, 1997, is revoked.

In accordance with 19 U.S.C. 1625, this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to 19 U.S.C. 1625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), of the Customs Regulations (19 CFR 177.10(c)(1)).

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, September 6, 2000.
CLA-2 RR:CR:GC 964217K
Category: Classification
Tariff No. 3504.00.50

MR. BASTIAAN VAN DEN BERG
INTERNATIONAL TRADE ADVISOR
NETHERLANDS CHAMBER OF COMMERCE IN THE U.S., INC.
4200 Linnean Avenue, NW
Washington, DC 20008

Re: Revocation of New York Ruling Letter (NYRL) B87801; Wheat Gluten; Novolat 80.

DEAR MR. VAN DEN BERG:

In response to your letters on behalf of Hyproca Veghel dated April 17 and June 30, 1997, Customs issued on August 13, 1997, NYRL B87801, concerning the classification of a product described as "Novolat 80" from the Netherlands, which was classified as wheat gluten, whether or not dried, to be used as animal feed, in subheading 1109.00.1000, Harmonized Tariff Schedule of the United States (HTSUS).

This letter is to inform you that in the course of reviewing the classification of a similar product, we have determined that NYRL B87801 no longer reflects the views of the Customs Service and is revoked in accordance with section 177.9(d) of the Customs Regulations (19 CFR 177.9(d)). Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), hereinafter, section 625, notice of the proposed revocation of NYRL B87801 was published on July 26, 2000, in the CUSTOMS BULLETIN, in Volume 34, No. 30. The following represents our position.

Facts:

"Novolat 80" is described as an enzymatically hydrolysed wheat gluten in powder form containing 80% protein, 10.5% carbohydrates, 1.0% ash, and amino acids and minerals.

The flow chart for "Novolat 80" indicates that wheat gluten is mixed with water and during the first reaction, protease enzymes and citric acid are added followed by a heating process. During the second reaction, a viscosity reducing enzyme is added and at the end of the reaction, citric acid is added. The product is then spray dried. The product is stated to be used in the production of animal feed.

Issue:

Whether "Novolat 80" is classified in heading 1109, HTSUS, as wheat gluten or in heading 3504 as other protein substances and derivatives, not elsewhere specified or included.

Law and Analysis:

The classification of imported merchandise under the HTSUS is governed by the principles set forth in the General Rules of Interpretation (GRI). GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section and chapter notes and, unless otherwise required, according to the remaining GRI's, taken in their appropriate order. Accordingly, we first have to determine whether the articles are classified under GRI 1.

Heading 1109, HTSUS, provides for wheat gluten, whether or not dried. The Explanatory Notes (EN's) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and General Rules of Interpretation of the HTSUS. The EN's to heading 1109, state that

Gluten is extracted from wheat flour by simple aqueous separation from the other constituents (starch, etc.). It comes in the form of a whitish viscous liquid or paste ("moist" gluten) or a cream-coloured powder (dry gluten).

It consists essentially of a mixture of various proteins, the main ones being gliadin and glutenin (which account for 85 to 95 % of the total). The presence of these two proteins is characteristic of wheat gluten, which owes to them its elasticity and plasticity when mixed with water in suitable proportions.

Gluten is used mainly to enrich in proteins flours used in making certain types of bread or biscuits, of macaroni or similar products or of dietetic preparations. It is also used as a binder in certain meat preparations, for the manufacture of certain glues or of products such as gluten sulphate or gluten phosphate, hydrolysed vegetable proteins or sodium glutamate.

The heading excludes, *inter alia*;

- (a) Wheat flour enriched by the addition of gluten (heading 11.01).
- (b) Proteins extracted from wheat gluten (generally heading 35.04).
- (c) Wheat gluten prepared for use as a glue or as a glazing or dressing for the textile industry (heading 35.06 or 38.09).

The EN's, in essence, describe wheat gluten as extracted from wheat and due to its elasticity and plasticity, is used in making bread and similar products. It is also used as a binder in certain meat preparations and in the manufacture of other products such as "hydrolysed vegetable proteins". The EN's indicate that products made with the use of wheat gluten are excluded from the heading. "Hydrolysed vegetable proteins", made with the use of wheat gluten are not covered by heading 1109, and therefore not classified in heading 1109, HTSUS, by virtue of GRI 1.

Heading 3504, HTSUS, provides for peptones and their derivatives; other protein substances and their derivatives, not elsewhere specified or included; hide powder, whether or not chromed. Subheading 3504.00.10, HTSUS, provides for protein isolates and 3504.00.50, HTSUS, provides, in part, for other protein substances and their derivatives, not elsewhere specified or included. Since "Novolat 80" is not specifically classified or included elsewhere in the tariff, and assuming that the product can not pass a vitality test (elasticity and plasticity) for vital wheat gluten, it is classified by virtue of GRI 1, in subheading 3504.00.50, HTSUS.

Holding:

"Novolat 80", as described above, is classified in subheading 3504.00.50, HTSUS, as other protein substances and their derivatives, not elsewhere specified or included.

NYRL B87801 dated August 13, 1997, is revoked.

In accordance with 19 U.S.C. 1625, this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to 19 U.S.C. 1625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), of the Customs Regulations (19 CFR 177.10(c)(1)).

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 6, 2000.
CLA-2 RR:CR:GC 963306K
Category: Classification
Tariff No. 3504.00.50

MR. NED A. LARSON
SENIOR ACCOUNT MANAGER
HOOGEWEGT U.S. INC.
724 Florsheim Drive
Libertyville, IL 60048-0459

Re: Solpro 300; Enzymatically Hydrolyzed Wheat Protein.

DEAR MR. LARSON:

In your letter dated April 16, 1999, to the Director, Customs National Commodity Specialist Division, New York, you requested a classification ruling under the Harmonized Tariff Schedule of the United States (HTSUS), for a product referred to as "Solpro 300". Your letter was referred to Headquarters for a direct response. We regret the delay in not responding earlier on this very complicated matter.

Facts:

The product is known as "Solpro 300" produced in Belgium. The submitted technical literature describes the product as "an enzymatically hydrolysed wheat protein isolate obtained from (wheat) gluten". It is composed of 84% protein (using a factor of 6.25), less than 7% moisture, less than 1.5% ash and 6% total fat content. It is prepared from wet wheat gluten to which two enzymes, endoprotease and a-amylase, have been added. The mixture is homogenized and heated to a temperature that will cause the enzymes to react with the gluten. The reaction proceeds under controlled conditions and is stopped once the desired product is obtained. The pH of the product is then adjusted with lactic acid. The product is pasteurized, concentrated by evaporation, dried, ground and packaged in 50 pound bags, 25 kilogram bags, one metric ton totes and/or pneumatic bulk tankers.

The literature further describes the product as more soluble which has greater emulsifying properties and is less elastic than the material from which it is derived, wheat gluten. It is used as an ingredient in wet and extruded pet food products.

Customs laboratory report number 2-1999-22408 dated October 6, 1999, reported that the submitted sample did not pass a vitality test (elasticity and plasticity) for vital wheat gluten, and has evidence of hydrolysis.

Issue:

Whether "Solpro 300" is classified in heading 1109, HTSUS, as wheat gluten or in heading 3504 as other protein substances and derivatives, not elsewhere specified or included.

Law and Analysis:

The classification of imported merchandise under the HTSUS is governed by the principles set forth in the General Rules of Interpretation (GRI). GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section and chapter notes and, unless otherwise required, according to the re-

maining GRI's, taken in their appropriate order. Accordingly, we first have to determine whether the articles are classified under GRI 1.

Heading 1109, HTSUS, provides for wheat gluten, whether or not dried. The Explanatory Notes (EN's) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and General Rules of Interpretation of the HTSUS. The EN's to heading 1109, state that

Gluten is extracted from wheat flour by simple aqueous separation from the other constituents (starch, etc.). It comes in the form of a whitish viscous liquid or paste ("moist" gluten) or a cream-coloured powder (dry gluten).

It consists essentially of a mixture of various proteins, the main ones being gliadin and glutenin (which account for 85 to 95 % of the total). The presence of these two proteins is characteristic of wheat gluten, which owes to them its elasticity and plasticity when mixed with water in suitable proportions.

Gluten is used mainly to enrich in proteins flours used in making certain types of bread or biscuits, of macaroni or similar products or of dietetic preparations. It is also used as a binder in certain meat preparations, for the manufacture of certain glues or of products such as gluten sulphate or gluten phosphate, hydrolysed vegetable proteins or sodium glutamate.

The heading excludes, *inter alia* ;

- (a) Wheat flour enriched by the addition of gluten (heading 11.01).
- (b) Proteins extracted from wheat gluten (generally heading 35.04).
- (c) Wheat gluten prepared for use as a glue or as a glazing or dressing for the textile industry (heading 35.06 or 38.09).

The EN's, in essence, describe wheat gluten as extracted from wheat and due to its elasticity and plasticity, is used in making bread and similar products. It is also used as a binder in certain meat preparations and in the manufacture of other products such as "hydrolysed vegetable proteins". The EN's indicate that products made with the use of wheat gluten are excluded from the heading. "Hydrolysed vegetable proteins", made with the use of wheat gluten are not covered by heading 1109, and therefore not classified in heading 1109, HTSUS, by virtue of GRI 1.

Heading 3504, HTSUS, provides for peptones and their derivatives; other protein substances and their derivatives, not elsewhere specified or included; hide powder, whether or not chromed. Subheading 3504.00.10, HTSUS, provides for protein isolates and 3504.00.50, HTSUS, provides, in part, for other protein substances and their derivatives, not elsewhere specified or included. Since "Solpro 300" is not specifically classified or included elsewhere in the tariff, and noting Customs laboratory report that the sample submitted has been partially enzymatically hydrolysed and has lost its vitality, it is classified by virtue of GRI 1, in subheading 3504.00.50, HTSUS.

Holding:

A product described as "Solpro 300", an enzymatically hydrolysed vegetable protein made with the use of wheat gluten (which does not pass a vitality test for wheat gluten), is classified as other protein substances and their derivatives, not elsewhere specified or included, in subheading 3504.00.50, HTSUS.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

MODIFICATION AND REVOCATION OF CUSTOMS RULING LETTERS AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF KNITTED CAPELETS

AGENCY: U.S. Customs Service, Department of Treasury.

ACTION: Notice of modification and revocation of tariff classification ruling letters and treatment relating to the classification of knitted capelets.

SUMMARY: Pursuant to Section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), this notice advises interested parties that Customs is modifying one ruling letter and revoking two ruling letters and any treatment previously accorded by Customs to substantially identical merchandise pertaining to the tariff classification of knitted capelets. Notice of the proposed modification and revocation was published in the CUSTOMS BULLETIN of July 26, 2000, Vol. 34, No. 30. No comments were received.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after November 20, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Beth Goodman, Textile Classification Branch, (202) 927-1368.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. § 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

The subject capelets were originally classified in heading 6102 of the Harmonized Tariff Schedule Annotated ("HTSUSA"), as women's knitted capes and also within heading 6114, HTSUSA, as other knit

garments. However, due to the amount of coverage afforded the wearer and the styling of the subject capelets, it is Customs view that the capelets are more properly classified in heading 6117, HTSUSA, as other made up clothing accessories. The items under review are described as capelets which provide coverage to the shoulders, upper back and chest area as well as the upper arms, but do not extend to the abdomen area or waist. The subject merchandise is worn for style and decorative purposes and lacks coverage and other features which would afford the wearer protection from the elements in a manner comparable to the merchandise in heading 6102, HTSUSA. In Port Decision (PD) F82821, dated March 1, 2000, concerning the tariff classification of a knitted capelet from Hong Kong and China, the product was erroneously classified under subheading 6102.10.0000, HTSUSA, as a women's knitted cape of wool. In PD F82960, dated February 28, 2000, concerning the tariff classification of a knitted capelet from Hong Kong, the product was erroneously classified under 6102.30.1000, HTSUSA, the provision for a women's knitted cape of man made fibers containing 23 percent or more of wool. In Headquarters Ruling (HQ) 084247, dated July 28, 1989, concerning the tariff classification of a knitted capelet from Taiwan, the product was classified under 6114, HTSUSA, as an other knit garment. The correct classification for these products should be under subheading 6117.10, HTSUSA as an other knit accessory similar to shawls, scarves, mufflers, mantilla, veils and the like.

Customs, pursuant to 19 U.S.C. 1625(c)(1), is revoking PD F82821, PD F82960, and modifying HQ 084247 and any other ruling not specifically identified on identical or substantially similar merchandise to reflect the proper classification within the HTSUSA pursuant to the analysis set forth in Headquarter Rulings ("HQ") 964226 (see "Attachment A" to this document); HQ 964225 (see "Attachment B" to this document); and HQ 964232 (see "Attachment C" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical merchandise.

As stated in the proposed notice, this modification and revocations will cover any rulings on this issue which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the issue subject to this notice, should have advised Customs during the notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, have been the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations involving the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in sub-

stantially identical transactions should have advised Customs during the notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Dated: August 31, 2000.

JOHN E. ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, September 1, 2000.
CLA-2 RR:CR:TE 964226 mbg
Category: Classification
Tariff No. 6117.10.1000

MS. STACY L. WEINBERG
GRUNFELD, DESIDERIO, LEBOWITZ & SILVERMAN LLP
COUNSELORS AT LAW
245 Park Avenue, 33rd Floor
New York, NY 10167-3397

Re: Tariff Classification of Knitted Capelet Accessory Made in China and Hong Kong; Revocation of PD F82821.

DEAR MS. WEINBERG:

On March 1, 2000, Customs issued Port Decision ("PD") Letter PD F82821 to your firm, on behalf of your client American Eagle Outfitter's Inc., regarding the tariff classification of a women's knitted capelet. The capelet was originally classified as a women's knitted cape of wool under subheading 6102.10.0000 of the Harmonized Tariff Schedule Annotated ("HTSUSA"). Upon review, Customs has determined that the capelet was erroneously classified. The correct classification for the product should be under subheading 6117.10.1000, HTSUSA, based on classification as a knitted accessory. PD F82821 is hereby revoked for the reasons set forth below.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed revocation of PD F82821 was published on July 26, 2000, in the CUSTOMS BULLETIN, Volume 34, Number 30. No comments were received.

Facts:

The submitted sample, Style 4708, is a knitted poncho like article designed to be worn by women. The merchandise is composed of 100 percent wool. The item has no sleeves or pockets, a full-front zipper opening, a hood and fringe along the bottom. Since the merchandise is manufactured unsized, the amount of coverage provided will vary depending on the size of the woman wearing the article; however, the article is designed to provide coverage to the shoulders, upper back and chest area as well as the upper arms, but does not extend to the abdomen area or waist. It is designed to be worn over other outerwear such as a blouse or shirt.

Issue:

Whether the subject merchandise is properly classified under heading 6102, HTSUSA, providing for capes, cloaks and similar articles, or whether the appropriate heading is 6117, HTSUSA, as a knitted clothing accessory, or, in the alternative, under heading 6114, HTSUSA, as an other knit garment?

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation ("GRI's"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRIs.

There are three competing headings under the HTSUSA which must be considered for classification of the merchandise under consideration: heading 6102 provides for *inter alia* women's knitted or crocheted coats, capes, windbreakers and similar articles; heading 6114, provides for other knitted or crocheted garments; and heading 6117, provides for other knitted or crocheted clothing accessories.

Determination of the HTSUSA classification of the subject merchandise requires an understanding of terminology which is germane to the issue and utilized by the HTSUSA. We note the following definitions:

- Shawl** square or oblong piece of material used for shoulder covering and is worn by women; The term also implies any material used for shoulder or head covering in the accepted sense of today. THE MODERN TEXTILE AND APPAREL DICTIONARY, GEORGE E. LINTON 506 (1973).
- Cape** sleeveless outer garment of any length hanging loosely from the shoulders; usually covering back, shoulders, arms. THE FASHION DICTIONARY, MARY BROOKS PICKEN 56 (1973).
- Capelet** any small cape. DICTIONARY OF FASHION, CHARLOTTE MANKEY CALASIBETTA 90 (1998).
- Poncho** (1) fashion item shaped like a square or small oblong blanket with a hole in the center for the head, frequently fringed; (2) utilitarian garment consisting of waterproof fabric with a slash in the center for the head; when worn it was used as a rain cape, when not worn it could be used as a blanket. DICTIONARY OF FASHION AT 446.

Style 4708 is typical of a new line of items which are said to be the hot new fashion item for Fall 2000; however, the merchandise is not typical of those items to which it has been likened such as a poncho, cape or shawl. The merchandise under consideration is styled in such a way that it possesses at least one feature of each of the aforementioned items. Style 4708 has a full front zipper. The length of the subject merchandise is not to or below the waist as is the length in a typical poncho or cape. Much like a cape or poncho, the item also has no arms or sleeves; yet it is not intended to be loose fitting as it is cut to be snug around the shoulders. In addition, the size of the item and the amount of coverage provided to the wearer resembles the amount of coverage typically afforded by a shawl in that it does not extend beyond the mid-upper body. However, upon extensive research, Customs has determined that the appropriate term for this merchandise is that of "capelet" which is not defined in the HTSUSA or EN.

In applying the rule of *ejusdem generis* to determine whether an item is embraced within a particular class, the courts have looked to the articles enumerated within that class to ascertain the characteristics they have in common. *Kotake Co., Ltd. v. United States*, 58 Cust. Ct. 196, C.D. 2934 (1967). The class of items classified within heading 6102 is that typical of outer wear such as coats, jackets, and similar articles which provide protection from the weather.

The EN to heading 6102, HTSUSA, state that the provisions of the EN to heading 6101, HTSUSA, apply *mutatis mutandis* to the articles of the heading. The EN to heading 6101 state that the heading covers a category of garments characterized by the fact that they are *generally worn over all other clothing for protection against weather* and specifically include capes and ponchos within this heading. The subject merchandise is worn for style and

decorative purposes and lacks coverage and other features which would afford the wearer protection from the elements. The short length of the item is not conducive for providing any warmth below the shoulder or chest area.

Customs views the length of a garment to be sometimes an influential factor in determining how a garment is classified. For instance, if the subject merchandise reached to at least the waist, the classification would not be an issue; most likely all concerned would consider the merchandise to be a poncho within heading 6102, HTSUSA. However, this item only extends at a maximum to approximately twelve inches in length. The short length in conjunction with the lack of protection against the weather precludes classification in heading 6102, HTSUSA.

Therefore, the next issue for determination is whether the capelet should be considered a garment of heading 6114, HTSUSA, or an accessory of heading 6117, HTSUSA. The EN to heading 6114, HTSUSA, state the "heading covers knitted or crocheted garments which are not included more specifically in the preceding headings of th[e] Chapter." While this heading is a basket provision, the garments classifiable in heading 6114 normally are those garments which either provide a greater degree of coverage to the wearer than the subject capelet or could be worn without any other articles of clothing.

The EN to heading 6117, HTSUSA, state that "the heading covers, *inter alia*, shawls, scarves, mufflers, mantillas, veils, and the like." (emphasis added.) Although the terms set forth in heading 6117, i.e. shawls, scarves, mantillas, and veils, are not defined in the EN to heading 6117, HTSUSA, we note that these same terms are defined in the EN to heading 6214, HTSUSA. The EN to heading 6214, HTSUSA, states in relevant part:

(1) **Shawls.** These are usually square, triangular or circular, and large enough to cover the head and shoulders.

(2) **Scarves and mufflers.** These are usually square or rectangular and are normally worn around the neck.

(3) **Mantillas.** These are kinds of light shawls or scarves, usually of lace, worn by women over the head and shoulders.

The EN further provides that "the edges of these articles are usually hemmed, rolled, bordered or fringed." (emphasis added.)

In applying the rule of *ejusdem generis* to determine whether the capelet is embraced within heading 6117, HTSUSA, Customs has looked at the common characteristics of the capelet and the aforementioned articles. (See *Kotake*, 58 Cust. Ct. 196, C.D. 2934.) Style 4708 is intended to be worn in much the same sense as a shawl in that it is to cover the shoulders and to be worn over other garments when the weather would not require a heavier coat or wrap. The new fashion trends have dictated that Style 4708 resemble a pull-over poncho in appearance yet resemble a shawl in length and the amount of elemental protection afforded to the wearer. As such, classification as an accessory in heading 6117, HTSUSA, is appropriate.

While the subject capelet is not *eo nomine* provided for within heading 6117, HTSUSA, the heading does allow for accessories which have a likeness to the articles which are specifically named in the heading. Customs considers the subject capelet to be within the purview of "and the like" of subheading 6117.10, HTSUSA. (emphasis added.)

Finally, in past rulings Customs has stated that the crucial factor in the classification of merchandise is the merchandise itself. As stated by the court in *East Industries, Inc. v. United States*, 9 Ct. Int'l Trade 549, 552 (1985), aff'd 786 F.2d 1144 (CAFC, April 1, 1986), "the merchandise itself may be strong evidence of use". However, when presented with articles which are ambiguous in appearance, Customs will look to other factors such as environment of sale, advertising and marketing, recognition in the trade of virtually identical merchandise, and documentation incidental to the purchase and sale of the merchandise. It should be noted that Customs considers these factors in totality and no single factor is determinative of classification as each of these factors viewed alone may be flawed. Moreover, Customs has been informed that other merchandise identical in function and design currently being sold in retail stores, is displayed in the accessory departments.

Holding:

PD F82821 is hereby revoked.

The capelet is properly classified under subheading 6117.10.1000, HTSUSA, which provides for "Other made up clothing accessories, knitted or crocheted; knitted or crocheted parts of garments or of clothing accessories: Shawls, scarves, mufflers, mantillas, veils and the like: Of wool." The capelet is dutiable at the general column one rate of 9.8 percent *ad valorem*. The textile restraint category is 459.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to time of shipment, *The Status Report on Current Import Quotas (Restriction Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

JOHN E. ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, August 31, 2000.
CLA-2 RR:CR:TE 964225 mbg
Category: Classification
Tariff No. 6117.10.2010

MRS. LISA YORK
SPEIGEL IMPORTS
ASSISTANT IMPORT MANAGER-HQ 7
3500 Lacey Road
Downers Grove, IL 60515

Re: Tariff Classification of Knitted Capelet Accessory Made in Hong Kong; Revocation of PD F82960.

DEAR MRS. YORK:

On February 28, 2000, Customs issued Port Decision ("PD") Letter PD F82960 to your company, Spiegel Imports, regarding the tariff classification of a women's knitted capelet. The capelet was originally classified as a women's knitted cape under subheading 6102.30.1000 of the Harmonized Tariff Schedule Annotated ("HTSUSA"). Upon review, Customs has determined that the capelet was erroneously classified. The correct classification for the product should be under subheading 6117.10.2010, HTSUSA, based on classification as a knitted accessory. PD F82960 is hereby revoked for the reasons set forth below.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed revocation of PD F82960 was published on July 26, 2000, in the CUSTOMS BULLETIN, Volume 34, Number 30. No comments were received.

Facts:

The submitted sample, Style 16-6059s/catalog number 16-6235, is a knitted poncho like article designed to be worn by women. The merchandise is composed of 35 percent acrylic, 32 percent wool, 32 percent nylon, and 1 percent spandex. The item has no sleeves or pockets, a funnel neckline, a full five button frontal closure and a straight edge bottom. Since the merchandise is manufactured unsized, the amount of coverage provided will vary depending on the size of the woman wearing the article; however, the article is designed to provide coverage to the shoulders, upper back and chest area as well as the upper arms, but does not extend to the abdomen area or waist. It measures approximately 11 inches in length below the neckline. It is designed to be worn over other outerwear such as a blouse or shirt.

Issue:

Whether the subject merchandise is properly classified under heading 6102, HTSUSA, providing for capes, cloaks and similar articles, or whether the appropriate heading is 6117,

HTSUSA, as a knitted clothing accessory, or, in the alternative, under heading 6114, HTSUSA, as an other knit garment?

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation ("GRIs"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRIs.

There are three competing headings under the HTSUSA which must be considered for classification of the merchandise under consideration: heading 6102 provides for *inter alia* women's knitted or crocheted coats, capes, windbreakers and similar articles; heading 6114, provides for other knitted or crocheted garments; and heading 6117, provides for other knitted or crocheted clothing accessories.

Determination of the HTSUSA classification of the subject merchandise requires an understanding of terminology which is germane to the issue and utilized by the HTSUSA. We note the following definitions:

- Shawl** square or oblong piece of material used for shoulder covering and is worn by women; The term also implies any material used for shoulder or head covering in the accepted sense of today. THE MODERN TEXTILE AND APPAREL DICTIONARY, GEORGE E. LINTON 506 (1973).
- Cape** sleeveless outer garment of any length hanging loosely from the shoulders; usually covering back, shoulders, arms. THE FASHION DICTIONARY, MARY BROOKS PICKEN 56 (1973).
- Capelet** any small cape. DICTIONARY OF FASHION, CHARLOTTE MANKEY CALASIBETTA 90 (1998).
- Poncho** (1) fashion item shaped like a square or small oblong blanket with a hole in the center for the head, frequently fringed; (2) utilitarian garment consisting of waterproof fabric with a slash in the center for the head; when worn it was used as a rain cape, when not worn it could be used as a blanket. DICTIONARY OF FASHION AT 446.

Style 16-6059s is typical of a new line of items which are said to be the hot new fashion item for Fall 2000; however, the merchandise is not typical of those items to which it has been likened such as a poncho, cape or shawl. The merchandise under consideration is styled in such a way that it possesses at least one feature of each of the aforementioned items. Style 16-6059s is pulled over the head like a poncho, yet the length is not to or below the waist as is the length in a typical poncho. Much like a cape or poncho, the item also has no arms or sleeves; yet it is not intended to be loose fitting as it is cut to be snug around the shoulders. In addition, the size of the item and the amount of coverage provided to the wearer resembles the amount of coverage typically afforded by a shawl in that it does not extend beyond the mid-upper body. However, upon extensive research, Customs has determined that the appropriate term for this merchandise is that of "capelet" which is not defined in the HTSUSA or EN.

In applying the rule of *ejusdem generis* to determine whether an item is embraced within a particular class, the courts have looked to the articles enumerated within that class to ascertain the characteristics they have in common. *Kotake Co., Ltd. v. United States*, 58 Cust. Ct. 196, C.D. 2934 (1967). The class of items classified within heading 6102 is that typical of outer wear such as coats, jackets, and similar articles which provide protection from the weather.

The EN to heading 6102, HTSUSA, state that the provisions of the EN to heading 6101, HTSUSA, apply *mutatis mutandis* to the articles of the heading. The EN to heading 6101 state that the heading covers a category of garments characterized by the fact that they are *generally worn over all other clothing for protection against weather* and specifically include capes and ponchos within this heading. The subject merchandise is worn for style and decorative purposes and lacks coverage and other features which would afford the wearer protection from the elements. The short length of the item is not conducive for providing any warmth below the shoulder or chest area.

Customs views the length of a garment to be sometimes an influential factor in determining how a garment is classified. For instance, if the subject merchandise reached to at least the waist, the classification would not be an issue; most likely all concerned would consider the merchandise to be a poncho within heading 6102, HTSUSA. However, this item only extends at a maximum to approximately eleven inches in length. The short length in conjunction with the lack of protection against the weather precludes classification in heading 6102, HTSUSA.

Therefore, the next issue for determination is whether the capelet should be considered a garment of heading 6114, HTSUSA, or an accessory of heading 6117, HTSUSA. The EN to heading 6114, HTSUSA, state the "heading covers knitted or crocheted garments which are not included more specifically in the preceding headings of th[e] Chapter." While this heading is a basket provision, the garments classifiable in heading 6114 normally are those garments which either provide a greater degree of coverage to the wearer than the subject capelet or could be worn without any other articles of clothing.

The EN to heading 6117, HTSUSA, state that "the heading covers, *inter alia*, shawls, scarves, mufflers, mantillas, veils, and the like." (emphasis added.) Although the terms set forth in heading 6117, i.e. shawls, scarves, mantillas, and veils, are not defined in the EN to heading 6117, HTSUSA, we note that these same terms are defined in the EN to heading 6214, HTSUSA. The EN to heading 6214, HTSUSA, states in relevant part:

- (1) **Shawls.** These are usually square, triangular or circular, and large enough to cover the head and shoulders.
- (2) **Scarves and mufflers.** These are usually square or rectangular and are normally worn around the neck.
- (3) **Mantillas.** These are kinds of light shawls or scarves, usually of lace, worn by women over the head and shoulders.

The EN further provides that "the *edges of these articles are usually hemmed, rolled, bordered or fringed.*" (emphasis added.)

In applying the rule of *ejusdem generis* to determine whether the capelet is embraced within heading 6117, HTSUSA, Customs has looked at the common characteristics of the capelet and the aforementioned articles. (See *Kotake*, 58 Cust. Ct. 196, C.D. 2934.) Style 16-6059s is intended to be worn in much the same sense as a shawl in that it is to cover the shoulders and to be worn over other garments when the weather would not require a heavier coat or wrap. The new fashion trends have dictated that Style 16-6059s resemble a pull-over poncho in appearance yet resemble a shawl in length and the amount of elemental protection afforded to the wearer. As such, classification as an accessory in heading 6117, HTSUSA, is appropriate.

While the subject capelet is not *eo nomine* provided for within heading 6117, HTSUSA, the heading does allow for accessories which have a likeness to the articles which are specifically named in the heading. Customs considers the subject capelet to be within the purview of " * * * and the like " of subheading 6117.10, HTSUSA. (emphasis added.)

Finally, in past rulings Customs has stated that the crucial factor in the classification of merchandise is the merchandise itself. As stated by the court in *Mast Industries, Inc. v. United States*, 9 Ct. Int'l Trade 549, 552 (1985), *aff'd* 786 F.2d 1144 (CAFC, April 1, 1986), "the merchandise itself may be strong evidence of use". However, when presented with articles which are ambiguous in appearance, Customs will look to other factors such as environment of sale, advertising and marketing, recognition in the trade of virtually identical merchandise, and documentation incidental to the purchase and sale of the merchandise. It should be noted that Customs considers these factors in totality and no single factor is determinative of classification as each of these factors viewed alone may be flawed. Customs has been informed that other merchandise identical in function and design currently being sold in retail stores, is displayed in the accessory departments.

Holding:

PD F82960 is hereby revoked.

The capelet is properly classified under subheading 6117.10.2010, HTSUSA, which provides for "Other made up clothing accessories, knitted or crocheted; knitted or crocheted parts of garments or of clothing accessories: Shawls, scarves, mufflers, mantillas, veils and the like: Of man-made fibers: Containing 23 percent or more by weight of wool or fine animal hair." The capelet is dutiable at the general column one rate of 11.6 percent *ad valorem*. The textile restraint category is 459.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part cate-

gories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to time of shipment, *The Status Report on Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

JOHN E. ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
Washington, DC, September 1, 2000.

CLA-2 RR:CR:TE 964232 mbg
Category: Classification
Tariff No. 6117.10.2010

DONALD J. UNGER, ESQ.
BARNES, RICHARDSON, & COLBURN
200 East Randolph Drive
Chicago, IL 60601

Re: Tariff Classification of Knitted Capelet Accessory Made in Taiwan; Modification of HQ 084247.

DEAR MR. UNGER:

On July 28, 1989, Customs issued Headquarters Ruling Letter ("HQ") 084247 to your firm on behalf of your client, Speigel, Inc., regarding the tariff classification of a woman's knit garment and accompanying knitted article under heading 6114 of the Harmonized Tariff Schedule Annotated ("HTSUSA"). Upon review of similar merchandise which was recently considered by Customs for classification, Customs has determined that the subject merchandise is substantially similar and therefore, classification in heading 6114, HTSUSA, was incorrect. The correct classification for the product should be under heading 6117, HTSUSA, based on classification as a knitted accessory. HQ 084247 is hereby modified for the reasons set forth below.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed modification of HQ 084247 was published on July 26, 2000, in the CUSTOMS BULLETIN, Volume 34, Number 30. No comments were received.

Facts:

HQ 084247 provides in part:

The submitted samples are a modified turtle neck long sleeve hip length pullover and short length pullover which fits over the shoulders but which has no sleeves or armholes. For ease of reference only, the long sleeve pullover will be referred to in this ruling as the pullover and the sleeveless pullover will be referred to as the cape.

The cape, which is shaped to conform to and cover the shoulders, has a straight neckline and a straight bottom that is approximately 10 inches below the neckline. It is made from a 6 X 6 allover knit fabric, which presents a distinctly ribbed effect. The pullover is constructed with a 1 X 1 allover knit fabric that presents a relatively plain knit appearance. It is stated that both articles will, when imported, be 50 percent wool and 50 percent acrylic by weight. The cape is not normally offered for sale separately.

Only the item described as a "cape" is being reconsidered for purposes of modification and the "pullover" classification and remaining analysis are not subject to reconsideration in this ruling letter.

Issue:

Whether the subject merchandise is properly classified under heading 6102, HTSUSA, providing for capes, cloaks and similar articles, or whether the appropriate heading is 6117, HTSUSA, as a knitted clothing accessory, or, in the alternative, under heading 6114, HTSUSA, as a knit garment?

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation ("GRIs"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRIs.

There are three competing headings under the HTSUSA which must be considered for classification of the merchandise under consideration: heading 6102 provides for *inter alia* women's knitted or crocheted coats, capes, windbreakers and similar articles; heading 6114, provides for other knitted or crocheted garments; and heading 6117, provides for other knitted or crocheted clothing accessories.

Determination of the HTSUSA classification of the subject merchandise requires an understanding of terminology which is germane to the issue and utilized by the HTSUSA. We note the following definitions:

- Shawl** square or oblong piece of material used for shoulder covering and is worn by women; The term also implies any material used for shoulder or head covering in the accepted sense of today. THE MODERN TEXTILE AND APPAREL DICTIONARY, GEORGE E. LINTON 506 (1973).
- Cape** sleeveless outer garment of any length hanging loosely from the shoulders; usually covering back, shoulders, arms. THE FASHION DICTIONARY, MARY BROOKS PICKEN 56 (1973).
- Capelet** any small cape. DICTIONARY OF FASHION, CHARLOTTE MANKEY CALASIBETTA 90 (1998).
- Poncho** (1) fashion item shaped like a square or small oblong blanket with a hole in the center for the head, frequently fringed; (2) utilitarian garment consisting of waterproof fabric with a slash in the center for the head; when worn it was used as a rain cape, when not worn it could be used as a blanket. DICTIONARY OF FASHION AT 446.

Customs has revisited HQ 084247 because the "cape" which was classified therein is similar to a new line of items which are said to be the hot new fashion item for Fall 2000. However, the subject merchandise is not typical of those items to which it has been likened such as a poncho, cape or shawl. The merchandise under consideration is styled in such a way that it possesses at least one feature of each of the aforementioned items. The subject merchandise is pulled over the head like a poncho yet the length is not to or below the waist as is the length in a typical poncho. Much like a cape or poncho, the item also has no arms or sleeves; yet it is not intended to be loose fitting as it is cut to be snug around the shoulders. In addition, the size of the item and the amount of coverage provided to the wearer resembles the amount of coverage typically afforded by a shawl in that it does not extend beyond the mid-upper body. However, upon extensive research, Customs has determined that the appropriate term for this merchandise is that of "capelet" which is not defined in the HTSUSA or EN.

In applying the rule of *ejusdem generis* to determine whether an item is embraced within a particular class, the courts have looked to the articles enumerated within that class to ascertain the characteristics they have in common. *Kotake Co., Ltd. v. United States*, 58 Cust. Ct. 196, C.D. 2934 (1967). The class of items classified within heading 6102 is that typical of outer wear such as coats, jackets, and similar articles which provide protection from the weather.

The EN to heading 6102, HTSUSA, state that the provisions of the EN to heading 6101, HTSUSA, apply *mutatis mutandis* to the articles of the heading. The EN to heading 6101 state that the heading covers a category of garments characterized by the fact that they are *generally worn over all other clothing for protection against weather* and specifically include capes and ponchos within this heading. The subject merchandise is worn for style and decorative purposes and lacks coverage and other features which would afford the wearer protection from the elements. The short length of the item is not conducive for providing any warmth below the shoulder or chest area.

Customs views the length of a garment to be sometimes an influential factor in determining how a garment is classified. For instance, if the subject merchandise reached to at least the waist, the classification would not be an issue; most likely all concerned would consider the merchandise to be a poncho within heading 6102, HTSUSA. However, this item only extends at a maximum to approximately ten inches in length. The short length in conjunction with the lack of protection against the weather precludes classification in heading 6102, HTSUSA.

Therefore, the next issue for determination is whether the capelet should be considered a garment of heading 6114, HTSUSA, or an accessory of heading 6117, HTSUSA. The EN to heading 6114, HTSUSA, state the "heading covers knitted or crocheted garments which are not included more specifically in the preceding headings of th[e] Chapter." While this heading is a basket provision, the garments classifiable in heading 6114 normally are those garments which either provide a greater degree of coverage to the wearer than the subject capelet or could be worn without any other articles of clothing. In HQ 084247, the subject merchandise was likened to "bolero-type tops" imported as parts of "two-piece dresses" because as with those items the merchandise would not be sold or worn separately. However, upon reconsideration Customs has determined that the capelet at issue is akin to a shawl and therefore, classification as a garment would not be appropriate.

The EN to heading 6117, HTSUSA, state that "the heading covers, *inter alia*, shawls, scarves, mufflers, mantillas, veils, and the like." (emphasis added.) Although the terms set forth in heading 6117, i.e. shawls, scarves, mantillas, and veils, are not defined in the EN to heading 6117, HTSUSA, we note that these same terms are defined in the EN to heading 6214, HTSUSA. The EN to heading 6214, HTSUSA, states in relevant part:

- (1) **Shawls.** These are usually square, triangular or circular, and large enough to cover the head and shoulders.
- (2) **Scarves and mufflers.** These are usually square or rectangular and are normally worn around the neck.
- (3) **Mantillas.** These are kinds of light shawls or scarves, usually of lace, worn by women over the head and shoulders.

The EN further provides that "the *edges of these articles are usually hemmed, rolled, bordered or fringed.*" (emphasis added.)

In applying the rule of *ejusdem generis* to determine whether the capelet is embraced within heading 6117, HTSUSA, Customs has looked at the common characteristics of the capelet and the aforementioned articles. (See *Kotake*, 58 Cust. Ct. 196, C.D. 2934.) The subject merchandise is intended to be worn in much the same sense as a shawl in that it is to cover the shoulders and to be worn over other garments when the weather would not require a heavier coat or wrap. Customs believes that the capelet at issue in HQ 084247 is similar to capelets which are the new fashion trend for Fall 2000. The new fashion trends have dictated that the capelets resemble a pull-over poncho in appearance yet resemble a shawl in length and the amount of elemental protection afforded to the wearer. As such, classification as an accessory in heading 6117, HTSUSA, is appropriate.

While the subject capelet is not *eo nomine* provided for within heading 6117, HTSUSA, the heading does allow for accessories which have a likeness to the articles which are specifically named in the heading. Customs considers the subject capelet to be within the purview of "**** and the like" of subheading 6117.10, HTSUSA. (emphasis added.)

In past rulings Customs has stated that the crucial factor in the classification of merchandise is the merchandise itself. As stated by the court in *Mast Industries, Inc. v. United States*, 9 Ct. Int'l Trade 549, 552 (1985), aff'd 786 F.2d 1144 (CAFC, April 1, 1986), "the merchandise itself may be strong evidence of use". However, when presented with articles which are ambiguous in appearance, Customs will look to other factors such as environment of sale, advertising and marketing, recognition in the trade of virtually identical merchandise, and documentation incidental to the purchase and sale of the merchandise.

Holding:

HQ 084247 is hereby modified to reflect classification of the capelet in heading 6117, HTSUSA.

The capelet is properly classified, if in chief weight of man-made fibers, under subheading 6117.10.2010, HTSUSA, which provides for "Other made up clothing accessories, knitted or crocheted; knitted or crocheted parts of garments or of clothing accessories: Shawls, scarves, mufflers, mantillas, veils and the like: Of man-made fibers: Containing 23 percent or more by weight of wool or fine animal hair." The capelet is dutiable at the general column one rate of 11.6 percent *ad valorem*. The textile restraint category is 459.

If the capelet is in chief weight of wool, the proper classification is under subheading 6117.10.1000, HTSUSA, which provides for "Other made up clothing accessories, knitted or crocheted; knitted or crocheted parts of garments or of clothing accessories: Shawls, scarves, mufflers, mantillas, veils and the like: Of wool or fine animal hair." The capelet is dutiable at the general one column rate of 9.8 percent *ad valorem*. The textile restraint number is 459.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to time of shipment, *The Status Report on Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

JOHN E. ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF STEERING COLUMN SWITCH

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of ruling letters and treatment relating to tariff classification of steering column switch.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking two rulings relating to the tariff classification of a wiper switch and a steering column switch, and revoking any treatment Customs has previously accorded to substantially identical transactions. Notice of the proposed revocation was published on July 26, 2000, in the CUSTOMS BULLETIN.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 20, 2000.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Commercial Rulings Division (202) 927-0760.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **informed compliance** and **shared responsibility**. These concepts are based on the premise that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's rights and responsibilities under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and declare value on imported merchandise, and to provide other necessary information to enable Customs to properly assess duties, collect accurate statistics and determine whether any other legal requirement is met.

Pursuant to Customs obligations, a notice was published on July 26, 2000, in the CUSTOMS BULLETIN, Volume 34, Number 30, proposing to revoke NY E81998, dated June 16, 1999, which classified a steering column switch as other parts and accessories for motor vehicles, in subheading 8708.99.80, Harmonized Tariff Schedule of the United States (HTSUS). Four comments were received in response to this notice. One commenter opposed the proposal, two commenters agreed with the proposal but recommended a different HTSUS provision, and the fourth commenter agreed with the proposal and cited another affected ruling.

The commenter opposing the proposal cites three Court decisions on the provision for switches in item 685.90, Tariff Schedules of the United States (TSUS), the HTSUS predecessor tariff code. Item 685.90 is the TSUS equivalent of HTSUS heading 8536. This commenter also cites a ruling that he maintains would potentially conflict with Customs proposal, if enacted. Finally, the commenter maintains that the heading 85.36 Explanatory Notes limit the switches of that heading to relatively simple devices, and the switches at issue in this proposal are exceedingly more complex. The three Court decisions under the TSUS all dealt with switches that incorporated additional components which the Court found imparted a significant additional function or functions. Thus, the merchandise in each case was held to constitute "more than" a switch of item 685.90. Because the 3-in-1 switch at issue here does not incorporate any additional components, we find that the cited cases do not serve as precedent here. HQ 959173, dated September 10, 1996, the

ruling the commenter cites as potentially in conflict with Customs proposal, classified automotive multifunction controls (AMCs) in subheading 8708.99.80, HTSUS. Most of the AMCs in HQ 959173 resembled wiring harnesses incorporating plugs, sockets, contacts and similar electrical devices while two consisted of a control arm connected to a plastic housing but with no wiring harness. It is important to note that HQ 959173 contained the explicit statement on p. 3 that "While the AMCs under consideration undoubtedly incorporate some kind of switching apparatus, the available information does not permit us to confirm this or to determine if the assemblies contain other electrical components that perform functions appropriate to goods of another heading." The ruling concluded that as additional information became available, Customs might have reason to reconsider the classification. For this reason, HQ 959173 has minimal precedent value in this case. Finally, concerning the commenter's reference to the 85.36 ENs as covering only relatively simple devices, we observe that the EN is exceedingly indefinite and provides no further guidance. We note as well that heading 8536 describes a commodity *eo nomine*, by name, and that normally an unlimited *eo nomine* designation covers all forms of the named article.

Two other commenters agree that the subheading 8708.99.80, HTSUS, classification is incorrect, and that heading 8537, HTSUS, boards, panels and other bases equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity, represents the correct classification. One commenter maintains that the steering column switch meets the terms of heading 8537 because that provision only requires two or more apparatus of headings 8535 or 8536, for electric control or the distribution of electricity; it does not require that they be two or more *different* apparatus. We do not agree. Our position is supported in part by the ENs on p. 1507 which exclude from heading 8537 "(b) Simple switch assemblies, such as those consisting of two switches and a connector (heading 85.35 or 85.36)." The other commenter states that its switch assemblies consist of combinations of switches, terminals and relays, all on printed circuit boards or other board assemblies. The commenter concludes that these assemblies for electric control or the distribution of electricity meet the terms of heading 8537. The cutaway drawings this commenter submitted depict, among others, its cruise control switch and its wiper and washer switch. The drawings do not, however, identify the other components the commenter mentions. Information Customs has gleaned from the automotive industry indicates that the switches this commenter describes may attach to or depend on printed circuit boards in order to function, but they do not include or incorporate printed circuit boards or other board assemblies. In addition, while it believes that all electronic control assemblies are similar within the automotive industry, the commenter concedes that its company does not have switch assemblies that contain the combinations identical to the 3-in-1 steering col-

umn switch at issue. For these reasons, Customs continues to believe that the 3-in-1 steering column switch is described by heading 8536, HTSUS.

The fourth commenter proposes that another ruling, NY E81997, dated June 16, 1999, also be revoked. That ruling classified a wiper switch that controls the speed of an automobile's windshield wiper as well as engages the washer fluid pump, in subheading 8708.99.80, HTSUS. This is a single lever mounted on the vehicle's steering column that, depending on which way it is toggled, performs two, separate switching functions. Customs agrees that this switch is provided for in heading 8536, HTSUS.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice, should have advised Customs during the comment period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY E81997 and NY E81998 to reflect the proper classification of the wiper switch and the 3-in-1 steering column switch in subheading 8536.50.90, HTSUS, as other switches, pursuant to the analysis in HQ 963621, which is set forth as the Attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment it previously accorded to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: August 31, 2000.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,

U.S. CUSTOMS SERVICE,

Washington, DC, August 31, 2000.

CLA-2 RR:CR:GC 963621 JAS

Category: Classification

Tariff No. 8536.50.90

MR. ROBERT J. RESETAR
 PORSCHE CARS NORTH AMERICA, INC.
 980 Hammond Drive, Suite 1000
 Atlanta, GA 30328

Re: NY E81997 and NY E81998 Revoked; Wiper Switch and Motor Vehicle Steering Column Switch.

DEAR MR. RESETAR:

In NY E81998, which the Director of Customs National Commodity Specialist Division, New York, issued to you on June 16, 1999, a motor vehicle steering column switch was held to be classifiable in subheading 8708.99.80, Harmonized Tariff Schedule of the United States (HTSUS), as other parts and accessories of motor vehicles.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY E81998 was published on July 26, 2000, in the CUSTOMS BULLETIN, Volume 34, Number 30. Four comments, including one from you, were received in response to that notice. In your comment, you proposed that NY E81997, a ruling on similar merchandise, also be revoked. After careful analysis of the submitted comments, we have decided that these revocations are warranted.

Facts:

The article in NY E81997 is a wiper switch mounted on the steering column of a motor vehicle. It consists of a single lever that, depending on which way it is toggled, controls the speed of the windshield wipers and also engages the washer fluid pump to spray cleaner onto the windshield. The article in NY E81998 is a 3-in-1 switch mounted on the steering column behind the steering wheel of a motor vehicle. It incorporates three individual levers mounted together, each consisting of a windshield wiper speed switch, a cruise control on/off/setting switch, and a turn signal and high/low headlight switch.

The HTSUS provisions under consideration are as follows:

8536	Electrical apparatus for switching or protecting electrical circuits or for making connections to or in electrical circuits * * * for a voltage not exceeding 1,000 V:
8536.50	Other switches:
8536.50.90	Other
	* * * * *
8537	* * * other bases, equipped with two or more apparatus of heading 8536 or 8537, for electric control or the distribution of electricity * * *:
8537.10	For a voltage not exceeding 1,000 V:
8537.10.90	Other
	* * * * *
8708	Parts and accessories of the motor vehicles of headings 8701 to 8705:
	Other parts and accessories of bodies (including cabs):
8708.29	Other:
8708.99.80	Other

Issue:

Whether the wiper switch and the 3-in-1 steering column switch are automotive parts or accessories or electrical apparatus of Chapter 85.

Law and Analysis:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings

and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Initially, Section XVI, Note 1(l), HTSUS, excludes articles of Section XVII. Heading 8708, other parts and accessories of motor vehicles, is in Section XVII. But, Section XVII, Note 2(f), HTSUS, excludes from the expressions "parts" and "parts and accessories" electrical machinery and equipment of Chapter 85. So, the question is whether these switches are described by a provision in Chapter 85.

In your two ruling requests, both dated May 27, 1999, from which NY E81997 and NY E81998 resulted, you cited heading 8537 for possible consideration. The rulings that were issued, however, contained no discussion of that provision. In HQ 963218, dated May 24, 2000, a ruling relating to the classification of power distribution junction boxes, the following discussion appears on the relationship between headings 8536 and 8537:

From their respective terms, headings 8536 and 8537 are mutually exclusive. Heading 8536 covers *individual* apparatus such as [switches], relays or fuses, or *multiples of one such apparatus*, that are principally used for switching or protecting or for making connections to or in electrical circuits. On the other hand, heading 8537 covers *assemblies* of the apparatus described in heading [8535 and] 8536, for example, combinations of [switches], relays and fuses on a board, panel or other base whose principal use is to control or distribute electricity (Underlining added).

The wiper switch consists of a single lever that performs separate switching functions and the 3-in-1 steering column switch consists of three individual switches joined in a common housing, each of which controls a separate function within the vehicle. These devices meet the terms of heading 8536. Customs continues to maintain that heading 8536 covers individual apparatus of the type named in the heading as well as multiples of the *same apparatus*. This conclusion is supported by the 8537 ENs on p. 1506 which include in that heading " * * * an assembly of apparatus of the kind referred to in the preceding headings (e.g., switches and fuses), on a board, panel" Switches and fuses are different apparatus. The ENs continue on p. 1507 by excluding from heading 8537 simple switch assemblies, such as those consisting of two switches and a connector. This EN refers such apparatus to heading 8535 or heading 8536. Because both the wiper switch and the 3-in-1 steering column switch are provided for in heading 8536, Section XVII, Note 2(f), HTSUS, eliminates heading 8708 from consideration.

Holding:

Under the authority of GRI 1, the wiper switch and the 3-in-1 steering column switch are provided for in heading 8536. They are classifiable in subheading 8536.50.90, HTSUS.

Effect on Other Rulings:

NY E81997, dated June 16, 1999, and NY E81998, dated June 16, 1999, are revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

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